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THE NATION

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**ON MAKING WARS &
SIGNING TREATIES**

**The Constitution Is
No Scrap of Paper**

RAOUL BERGER

**A THIEF'S BEST FRIEND
IS HIS FENCE**

Fred J. Cook

**MICHAEL HARRINGTON'S
SOCIALISM**

Bert Cochran

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LETTERS

source of arrogance

Coral Gables, Fla.

DEAR SIR: The source of a great deal of Nixon's power and arrogance stems from the support he gets from the Thirteen Old Men, the all-powerful committee chairmen who come to Congress from small towns in the rural states of the South—Eastland, Stennis, Long, Mills, Colmer, et al. Democrats in name only, their highly publicized opposition to him is window dressing. Behind the scenes, they support the lobbyists and Nixon in taking the majority of Americans to the cleaners.

Because of the seniority system, the least competent are trying to run the most complicated industrial urban society in history. You wonder at our exploding problems? Three-fourths of the hard-working, better educated Americans and 500 Senators and Representatives from the big cities and states are allowed but three of thirty-four powerful chairmanships. Thus, 75 per cent of Americans are not really represented in their government.

Perhaps the best way to shake Nixon up, to bring him back within our system of checks and balances would be by all-out attack on the seniority system. For this we have the potential support of 75 per cent of middle, not so silent, not so powerless Americans, if we can mobilize it.

Jerome D. Lang, Chairman
Coalition of Concerned Americans

can he get in?

Cuernavaca, Mexico

DEAR SIR: Bobbs-Merrill is publishing my *The American Inquisition, 1945-60* on April 15. They asked me to come to New York at that time, and I have also been invited to speak on the subject of the book at the Institute for Policy Studies, Washington, D.C.; three churches; Cooper Union and Channel 13 (N. Y.); the Universities of Illinois, Chicago; Wisconsin, Minnesota, Purdue, California (Berkeley); and on these other campuses: State University of New York (Purchase and Buffalo), State University College (New Paltz), Amherst, M.I.T., Wesleyan, Rutgers, Princeton, Northwestern, Oregon State, Stanford, California State (Chico).

I have applied for a visa to fulfill some of these engagements in April. The consul, who interviewed me on the basis of a 3-inch-thick dossier, said that Sen. Mike Mansfield had inquired about my "case." I made it clear that I have no apologies to offer for my life and politics, am unsympathetic to the present U.S. regime, but believe in the U.S. tradition of free exchange of ideas.

I first came to the United States at the age of 21, co-founded the *National Guardian* (New York) in 1948 and edited it until my deportation in 1955 to my native Britain.* As a deportee I may not re-enter the United States unless Washington will waive the "exclusion clause" of the immigration law.

My sessions with the consul, who said he would "try to get an answer by the end of the month," suggest that this is unlikely unless some pressure can be exerted inside the United States. I therefore ask readers to write to the U.S. Attorney General and/or the State Department, preferably both, and get others to do likewise.

Cedric Belfrage

*After testifying before the McCarthy committee in May 1953, Mr. Belfrage was picked up by immigration officials under the McCarran-Walters Act and held for deportation as an undesirable alien. He fought the case for two years, lost every round, was finally jailed and after two months of confinement agreed to accept deportation rather than lie indefinitely in a cell. Technically speaking, his departure was "voluntary."

The Editors

EDITORIALS

What About These Prisoners?

The American POWs now being repatriated are only a small fraction of the prisoners the war has produced, nor were these others all prisoners of war in the military sense. While the conflict raged, Nguyen Van Thieu and his predecessors were waging war against that considerable proportion of their own people who were not Communists, nor allied with the National Liberation Front, but who opposed the military dictatorship supported by the United States. These "civilian detainees" have suffered a fate incomparably worse than the American POWs; the physical condition of the few who have been released leaves no doubt on that score. While our men, even those who were held in the jungle by the Vietcong, are almost all in good shape, the civilians imprisoned by the Thieu regime are described by *Time* (March 19) as "shapes" rather than men. These "shapes," seen by a *Time* correspondent at a Cholon hospital, are described as "grotesque sculptures of scarred flesh and gnarled limbs"—the result of torture and years of being shackled in American-financed "tiger cages" on the prison island of Con Son.

The number of such "civilian internees" is unknown. They are held by both sides. Saigon says Hanoi holds 59,118 of them (this exact figure recalls the body counts released during the height of American involvement)—while Hanoi says Saigon has more than 200,000. Sylvan Fox (*The New York Times*, March 3) cites figures ranging from 20,000 to Hanoi's 200,000. Saigon, according to Fox, says it holds only about 5,000 "political prisoners," defined as captured Communist civil servants. These would come under the provisions of the Paris accords, as persons arrested for "having in any way contributed to the political and armed struggle" in South Vietnam. But what of those held by Saigon who are non-Communist but anti-government? They do not want to be handed over to the Communists; all they want is their freedom. Under Thieu, they are even less likely to get it than are Vietcong activists or sympathizers.

Even if the Paris agreement does not spell it out, we have an undeniable responsibility for these inhabitants of a political no-man's land. Thieu is supposedly our puppet. He is a recalcitrant puppet, but he will yield to American pressure when it is applied with sufficient force. He was opposed to the cease-fire in the first place, but he finally signed it. The Nixon-Thieu conference scheduled for early April at San Clemente is crucial in this respect. It involves moral responsibility on the part of the United States, but in addition, if Nixon does not lay down the law, the already precarious Paris accords may fall apart entirely. That the American side recognizes this danger is indicated by the mild reaction—until Mr. Nixon shook a gloved fist during his March 15th press conference—to the alleged movement of North Vietnamese troops and supplies, including tanks, along the Ho Chi Minh Trail.

Now Thieu is free to shift prisoners around, classifying neutralists as common criminals. Neutralists he de-

tests most of all because they present a major threat to his regime if they are released and allowed to tell their stories. Thieu is no slouch in the public relations field. He has held the Hanoi envoys in Saigon and elsewhere in South Vietnam under virtual house arrest, and his military police have even threatened to shoot American and other foreign reporters who have tried to interview the Communist members of the four-power joint military commission.

Under these conditions, it will be something of a miracle if the Paris peace arrangements survive. If the agreements fall apart, the Vietcong and the North Vietnamese will be blamed by the American-South Vietnamese side. By all the accounts that are getting through, however, Washington will be at least equally guilty.

Crossing the Aisle

On February 27, Rep. Donald Riegle, a Republican now serving his fourth term, announced in a speech in Flint, Mich., that he had decided to join the Democratic Party. His decision prompted enactment of a favorite ritual in the House: the colloquy that always ensues when a member "crosses the aisle." The Democrats, of course, were jubilant; conversion is the easiest way to pick up an additional seat in the wake of an election and Riegle is popular and respected. The Republicans spoke "more in sorrow than in anger"; Don was bid a sad adieu. Democrats stressed "the broad spectrum of ideological views" to be found in their party by contrast with the "shut up or get out" (Rep. Philip Burton, D., Calif.) attitude that prevails among Republicans. On the other hand, Rep. Philip Crane (R., Ill.)—a right-wing conservative—was delighted that Riegle had crossed the aisle; both he and Riegle would be the happier for it. "Those who insist upon blurring meaningful distinctions between parties," he said, "really do a disservice to the purpose of political parties." Rep. Earl F. Landgrebe (R., Ind.) was also glad to see Riegle depart, since he had never known him to cast "one conservative vote since I have been here."

Riegle's stated reason for switching parties was his conviction that the Republican Party has steadily lost its traditional character and, under Mr. Nixon, its policies are increasingly "imposed from the top down." Republicans have been "maneuvered into a strait jacket"; the new test of party loyalty is unswerving obedience to the current views of the incumbent administration, "ultimately, the views of one man." There is much truth in that, but in fact Riegle has often dissented from the White House line; he was one of three Republicans—the others were Rep. Paul ("Pete") McCloskey and Rep. Ogden Reid—who supported the anti-war moratorium proposal in the fall of 1969. It is a reasonable inference that he was primarily motivated to switch parties by a sense of political self-interest, since he has an eye on a Senate seat from Michigan for which his chances will be better as a Democrat. Much the same considerations doubtless prompted Rep. Ogden Reid and Mayor John V. Lindsay to change their registrations. For that matter, Rep. "Pete" McCloskey, who has "completely ruled out any possibility of a party switch,"

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doubtless feels that being a Republican gives him a certain advantage in the 11th Congressional District of California, not to mention the fact that he is too large a national figure for the state's feud-ridden Democratic Party to assimilate without discomfort. Yet Representative McCloskey and Rep. John Ashbrook (R., Ohio) both challenged Nixon in certain primaries, so apparently there is still room for dissent in Republican ranks.

What is involved in the defections of Riegle, Reid and Lindsay is not so much "freedom to dissent" as the need to respond to a realignment that is slowly taking place. They could have continued to speak their minds within the GOP but their "natural" constituencies would have gradually eroded. The fact is that too many Democrats belong, by temperament and conviction, in the Republican Party, just as some Republicans, by the same tests, should change registration. If each party continues to be tolerant of a spectrum of views that ranges from A to Z, they will remain debating societies, incapable of articulating programs or of implementing them once adopted. The party system must be strengthened and realignment is the process by which this end can be accomplished. John Connally could speed the process—and the sooner the better—by registering as a Republican.

Embarrassment of Riches

President Nixon is, in a manner of speaking, the sole beneficiary of CREEP which seems to be an ongoing political enterprise. The election over, CREEP, which raised more than \$50 million, had \$4.7 million on hand at the end of February and has raked in \$246,000 in new contributions since the first of the year. These funds came mostly from cautious souls, who wanted to be sure their man won before kicking in with promised contributions. Dr. Ruth Lewis Parkas, Nixon's choice to be Ambassador to Luxembourg, was one of these, with a belated \$200,000 contribution which came in after the election and after CREEP had announced a surplus of nearly \$5 million, but before her appointment on February 27. So far, the committee has returned \$655,000 or thereabouts to three large donors: \$250,000 to "the Vesco connection," months after officials of CREEP had been specifically warned about the background; a note for \$305,000 to "a financially troubled" Texas land speculator, and \$100,000 to Robert H. Allen, a Texas oilman who did not explain why he had requested the refund although it may have been because \$89,000 of it passed through a Mexican banker to a leader of the Watergate break-in.

What does the President do now with this huge and growing windfall? It was given to help finance his campaign and for no other purpose. Republican candidates complained, some audibly, about the way in which they had been left out in the cold. Hence the President can hardly turn over the ultimate balance to the Republican National Committee without the specific consent of each contributor. Nor can he hold it as trustee for Spiro Agnew and/or John Connally. And he cannot make use of it himself, as in a third-term bid, unless he can amend the Constitution. Yet the money continues to roll in as cautious favor seekers ante up. Should a gift

tax be paid if contributions are used for miscellaneous purposes he may designate? Obviously the President suffers from an embarrassment of riches, but he'll manage somehow. He can always impound the fund.

The Candid Spy

John T. Downey, the 42-year-old CIA agent who has returned to Connecticut after spending twenty years in a Chinese prison, is a remarkably candid spy. "I don't see that it benefited anybody," he said of his assignment. "I thought the twenty years were to a large extent wasted." As to what he told the Chinese: "I revealed about every bit of information I could." Obviously a sensible man. It is unfortunate that Mr. Downey has decided not to write a book for he has an important story to tell, not about Chinese prison routines but about the "caper" which wasted twenty years of his life and which he now feels was of no benefit to anyone. At one point, he told reporters: "I have a more sophisticated grasp of the United States society," and then added quickly, almost as a rebuttal to what may have seemed to be misgivings, "but it's my society and still a great society." One has a feeling that an account of his growth in social and political sophistication might make good reading. But of course the CIA would hold him to his contract, as in the Victor Marchetti case, and would want to censor whatever he wrote.

Perhaps that famous "watchdog" committee that is supposed to scrutinize the CIA's budget and keep it from wasting so much as a penny will want to hear from Mr. Downey (in secret session of course). At a time when the President is waging all-out war against the war on poverty, and slashing social programs right and left, he might well decide that the CIA should be dismantled. Routine intelligence functions could be assigned to other agencies and "dirty tricks" entirely eliminated. If there was ever justification for a secret agency whose activities were remote from Congressional supervision and whose budget was either "top secret" or concealed in the budgets of other agencies, that time has passed.

The Lindsay Years

New Yorkers register a cycle of emotion about their mayors. Each new mayor is greeted with unbounded enthusiasm in the hope that, at long last, the city will be able to cope. But the initial affection declines as the deterioration proceeds, with slight, if any, abatement. In the process, residents get to know their mayor as they know no other public official. They call him by his first name, yell at him, bombard him with compliments one moment and curses the next, picket him, threaten him, expect miracles of him, interrupt him, toss eggs at him, and in general subject him to a constant and brutal mauling, verbal and otherwise. As one year follows another and they suffer with him through blackouts, snow storms, strikes without end (those of transit and sanitation workers are the hardest to endure), police scandals, and every manner of tragic and comic occurrence, an underlying bond of affection develops

which is sharply repudiated as the next election looms.

Yet the shared experiences leave a residue of feeling which invariably finds expression at a later date. In retrospect, nearly every mayor is regarded with nostalgia. One looks back, for example, on Mayor Wagner and Mayor O'Dwyer with affection, and back still further to La Guardia with hopeless longing. So it has been and will be with Mayor Lindsay. He has decided, wisely no doubt, not to seek a third term. But whoever his successor may be, he will not be able to solve the city's problems and residents will start burnishing as a jewel the image of his predecessor. New Yorkers will surely not look back in anger at the Lindsay years. They will not soon forget the "hot summer" of 1967 when Lindsay was one of the few mayors who could walk the streets of a ghetto without a police escort. And they will have a chance to vote for him again, whether it be for Governor or Senator. *The Nation* admires his courage, respects his integrity, appreciates his efforts and wishes him well.

Sacred Cow, Sacred Bull

The sacred cow is the institution of life insurance; its complement, the sacred bull, is the image of civic virtue the industry seeks to project. As an unassailable institution it ranks with the family and religion. "If anything should happen to you," the breadwinner is advised (to say bluntly that he might die would be bad form), life insurance will take care of the wife and little ones. In a broader social sense, the parallels between life insurance and religion were pointed out in *Christian Century* some years back by an iconoclastic Yale professor, who noted the resemblance between cathedrals and the home offices of great insurance companies. With what goes on in these awe-inspiring edifices the buyers and beneficiaries of insurance have nothing to do; they assume that their money is invested with the fiduciary care and wisdom that come only from experience, frequently handed down from father to son.

Direct contact between the company and the family is through the insurance agent. At first he appears in the guise of a salesman; in case of bereavement, however, his sacerdotal character is revealed. There he is, the man from John Hancock, soberly dressed and of sober mien, carrying an appropriately black attaché case and bringing consolation and security. He is almost frocked, one might say.

Nevertheless, though in the rituals of birth, marriage and death the insurance agent ranks with the priest, life insurance is a business, and one of the biggest. It collects \$23 billion in premiums annually from 140 million consumers. It stands forth, also, as a citadel of free enterprise: it is, and always has been, ineffectively regulated. The state insurance commissioners usually keep a sharp eye on solvency, which means that buyers of life insurance can be reasonably certain that death benefits will be paid. The commissioners have no control over what the companies charge for a given coverage, nor the cut the agent gets when he sells a policy. The initial commission may exceed the first-year premium, but that, and the representations the agent may make to the buyer, and

the obfuscations which abound in many policies, are all in the realm of *caveat emptor*.

There is at least one conspicuous exception: Herbert Sidney Denenberg, the insurance commissioner of Pennsylvania. Among his achievements is the issuance of "A Shopper's Guide to Life Insurance," covering the 166 largest life insurance carriers among the 330 that do business in Pennsylvania. This summary is confined to cost of insurance; other factors, such as quality of service, are not included. To arrive at what insurance people call "interest-adjusted cost," Denenberg took the annual premium on a \$10,000 straight life policy, ranging from \$110 to \$417, depending on the buyer's age and sex, and the company's price structure. He added 4 per cent to the premium to reflect lost earnings—certainly a conservative figure, since more than 5 per cent is now the lowest savings bank interest rate. Subtracting dividends, if any, and cash value, Denenberg then averaged out the costs for policies bought by people in three separate age brackets—early 20s, mid-30s and early 50s. By this arithmetic he arrived at ten "best buys" and ten "worst buys." The average annual cost of the best buys varied between \$61.97 and \$70.60. The worst buys ranged from \$110.20 to \$119.30. The spread between the worst of the best and the best of the worst is about 56 per cent.

Until Denenberg's department went into all this investigation and calculation, a life insurance buyer stood an excellent chance of being fleeced. Unless he has Denenberg's data and can apply it in his own state, he remains vulnerable. A primary difficulty is the lack of federal regulation of an interstate industry. The Senate Antitrust Subcommittee (Sen. Philip A. Hart, D., Mich., chairman) recently made a brief survey of life insurance. One of the witnesses, John A. Durkin, insurance commissioner of New Hampshire, testified that effective regulation of the life insurance industry is only a "pious wish." He called for federal help. The only competition now, he said, is between giants vying "to erect the tallest glass office buildings," and between agents, whose chief interest is in getting the largest possible commissions. Denenberg, with Consumers Union and other witnesses, testified before the Hart committee that "the tens of thousands of policies that clutter the market are designed to confuse," and called for only two standard policies—a term policy providing pure insurance protection, with no savings element and escalating premiums as the insured ages; and a whole life policy, with level premiums and the accumulation of cash, whereby in effect the owner of the policy becomes a co-insurer until he decides to surrender the policy for its cash value. Full disclosure is particularly important in this, the most widely sold type of policy.

The life insurance industry receives so little attention that one must be grateful for even the meager glimpse the Hart committee gave us. For the present, apparently the best that can be hoped for is full disclosure, backed by federal standards for the states to enforce. But federal regulation must be the ultimate goal. It is truly astonishing that interest on charge accounts, where often only trifling sums are involved, must be precisely stated, while the enormous life insurance business goes unregulated in any meaningful sense. Or perhaps it is one more revelation of the political power of big business.

A Thief's Best Friend Is His Fence

FRED J. COOK

Mr. Cook, a long-time contributor to The Nation, is the author of many books, including the recently published The Nightmare Decade: The Life and Times of Senator Joe McCarthy (Random House).

Washington

"There is hardly a department store in the nation that has not dealt in stolen goods," says Chester H. Smith, staff director and general counsel for Sen. Alan Bible's Select Committee on Small Business, now preparing to investigate the wave of thefts that cost American business an estimated \$16 billion annually.

A piggyback trailer loaded with colored television sets disappears from a railroad terminal in the New York area as if some genie had spirited it away. A truck loaded with expensive men's shirts is hijacked on the highway, and its contents vanish. Such things do not happen by chance. They are not thefts of opportunity, but forays plotted and directed by an astute criminal who is customarily overlooked in accounts of crime—the fence.

The fence is usually pictured as a shadowy character who pays a thief 10¢ on the dollar for stolen jewels or furs and then disposes of the loot through hockshops or other hole-in-the-wall outlets. That type of middleman does exist; but Senator Bible's staff, after a four-year investigation, has built up the portrait of an entirely different kind of fence—one who operates more like a Wall Street broker, with a seemingly legitimate business front and with contacts threading the business world of the nation.

In public hearings scheduled for late March and early April, the small business committee expects to put into the record a detailed account of the broker-fence who schedules the theft of goods on assignment and by carload lots; who engages the hijackers, hires the trucks, stores the "swag" in a convenient warehouse—and then markets the merchandise to buyers in discount houses and department stores across the nation. The committee's studies indicate that probably as much as 95 per cent of the \$16 billion filched annually from the arteries of legitimate trade passes through the hands of such fences.

Yet the fence is rarely caught, rarely prosecuted. For one thing, the top-level broker-fence seldom comes within leagues of the stolen goods. He works like any businessman, behind a desk with a telephone, putting together the separate details of the caper. His hand is so hidden that it is difficult to pin responsibility on him; in addition, he is protected by an almost universal ignorance about his pivotal role. In one survey of police chiefs across the nation, the small business committee's staff found a chief who confessed that he did not even know what a fence was.

How does a competent fence put together the separate threads of his enterprise? Here is a preview of

some testimony the Senate hearings are expected to develop. This is an actual case, with only the names camouflaged.

This particular broker-fence—call him Robert Sharp—approached the buyer for a large department store, suggesting that they have dinner together. During the wining and dining, Sharp made this proposition:

"I'm setting up my own business, Sharp Shirts, Inc., and I'd like to see if I couldn't do some business with your store. We're going big-time. We're going to be dealing with the best department stores in the nation; and because of our volume, I can guarantee you brand shirts at 10¢ off the street price."

That sounded like a good deal to the buyer. It sounded even better when Sharp offered a sweetener.

"When you need a big order," he says, "just drop me a note at this post office box number. I'd like to get your store's business, and there'll be something in it for you."

Unless he is a dunce, the buyer must realize that you don't get \$500 or \$1,000 under the table (the kind of figures Sharp hints at, depending on the size of the order) unless you are dealing in tainted merchandise. But \$500 or \$1,000 quiets many a conscience in this society. The buyer asks no questions, and soon, when he needs 80 gross of, say, Arrow shirts, he drops a note to Sharp at the box number he was given.

The broker-fence now goes into action. He has a man on retainer at \$25 a week in the shipping department of Arrow shirts. A phone call gives him the information he needs: the number of the next truck going out with a load of shirts, the time of its departure. A second phone call alerts Sharp's favorite hijacker. He is given the essential information and told where to drive the truck and unload the cargo after he has knocked it off. He does the job on schedule.

"Now the fence makes another series of phone calls," says Ernest P. Evans, Chet Smith's top assistant. "He calls Avis to rent a truck; he calls Manpower, Inc. to hire a driver for the Avis truck. The driver goes to the warehouse where the hijacked shirt cargo is being held. The 80 gross of Arrow shirts are loaded onto the truck and delivered to the department store.

"The fence now is left with the remainder of the truckload. Back on the phone again. He calls Allied Van Lines and arranges to store his cargo for, say, a month. The Avis truck driver, following instructions, delivers the cargo there.

"Now it's back on the phone again for the fence. He calls cross-country, offering some of the most prestigious department stores in the nation a bargain on Arrow shirts. Soon he disposes of the remainder of the truckload. The profit to himself is enormous. And yet, during the whole deal, he never physically had possession of anything."

There are dividends for many accomplices to this theft that has victimized Arrow, its insurance company and,

ultimately, the customers who are going to have to pay higher prices to compensate for the loss. Chet Smith chuckles as he explains:

"The key man in every department store is the buyer. He is supposed to get the best goods for his store at the cheapest price possible, undercutting the competition; and he is generally very much on his own, with little supervision so long as he produces. The clever broker-fence can put a deal like this together in an hour, and it works so well that the buyer is going to go back and put more orders through him. Not only does the buyer get his \$1,000 under the table but the more he repeats this deal, shaving the street price, the bigger is his in-house reputation. He's the whiz who is doing a fantastic job for his store." Smith shakes his head and adds: "We often tell the department stores that if they paid as much attention to their buyers as they do to the credit of their customers, they could end a lot of this."

Broker-fences swinging deals of such magnitude are inevitably tied into the criminal operations of the underworld. They must have connections to hire the hijackers, to arrange for the shady drops; and so they become conduits for disposing not only of their own self-engineered pilferings but of swag funneled to them by organized crime. "Every crime family in the nation is involved in this operation," Evans says.

In New York recently, authorities were investigating a Sixth Avenue travel agency to which stolen credit cards and stolen airline tickets had been traced. A court order was obtained to tap the agency's telephone, and to their astonishment the listening sleuths soon learned that the travel agent was a big-league fence. "Every one of the six Mafia families in the New York area was using him, and he was disposing of the stolen merchandise to department stores from coast to coast," Evans says.

The advantages to organized crime are many and im-

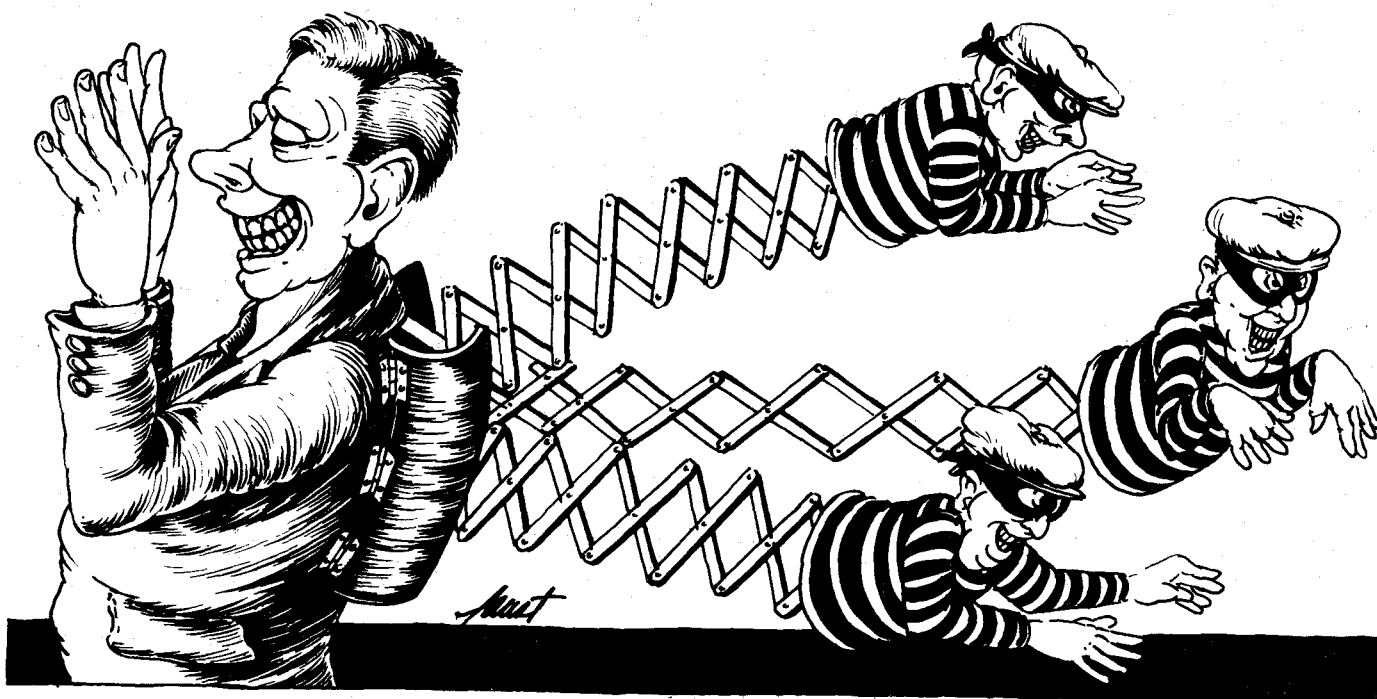
portant. "Money gained from this colossal fencing operation is legitimated right away and can be used for all kinds of criminal or other activity," Evans explains. "Take the shirt deal. The fence has legitimate checks from the stores that purchased the shirts. He keeps meticulous records. He pays out to Avis, to Manpower, to Allied Van Lines. He pays his taxes. He protects himself with high-powered auditors and attorneys and presents a front that, in appearance, is perfectly legitimate.

"The federal strike forces know all about this fencing operation, but have been largely hamstrung. We have one case in which a very large concern which is manufacturing clothing is acting as the fence for the distribution of Italian leather goods and shoes. These stolen articles are funneled right into the regular channel of distribution. Perhaps top management doesn't have any idea what is going on; it may be just some lower-echelon employees cashing in on their own. But it is going on."

The role of top management is one of the most sensitive issues in the whole fencing problem. If it does not recognize the obvious, it is almost the only group in merchandising that has retained its innocence. The channeling of literally billions of dollars of stolen goods directly into the legitimate avenues of commerce has become such an established practice that Eliot Lumbard, former crime consultant to Gov. Nelson A. Rockefeller, calls it "the second front" of business.

"It is not a question any more of trying to spot cargoes of exceptional value, like furs or jewels," he says. "Any cargo that is seized can be quickly and easily fenced, then funneled into the chain of distribution until it is disposed of in discount houses or in the most legitimate outlets here and abroad. A helluva lot of American business is involved in this."

Can such a vast merging of the criminal and legitimate lives of the nation exist without managements becoming aware? In a preliminary report last October, the small



business committee's staff expressed its doubts: "There is a strong feeling among law-enforcement people that legitimate businessmen too frequently purchase stolen goods knowingly from fences for resale through their wholesale or retail outlets. The Illinois Crime Commission has said:

"There is a disturbing lack of interest on the part of some legitimate business concerns regarding the identity of the persons with whom they deal. This lackadaisical attitude is conducive to the perpetration of frauds and the infiltration and subversion of legitimate business by the organized crime element."

A burglar, Robert L. Barnes of Landstone, Minn., gave the committee his caustic view of the ethics of a society in which undercutting "the street price" becomes a goal to be achieved by any means. Barnes began a twenty-seven-year career of crime when, as a boy of 10, he stole bundles of comic books from a neighborhood drugstore and hocked them to a barber who paid him 2¢ a copy. Before he was finished, he had become one of the most notorious burglars in the nation, with swag running into hundreds of thousands of dollars.

From a professional viewpoint, Barnes has only scorn for the law's obsession with arresting thieves, burglars and hijackers, as if by jailing them a dent could be made in the crime wave. He points out that, no matter how many such criminals are imprisoned, the thievery continues unabated. Why? He answers that "the cause of the rising, and continued rising, crime is spelled out in five letters, FENCE. . . . He, the fence, plays a vital role in each successful hijacking, dock and boxcar looting and burglary that is committed within the United States daily." Without the fence, Barnes declares, "such acts of crime . . . could never be successful or, for that matter, even committed."

He cited a couple of examples from his own vast experience: "In the early fifties, in St. Louis, Mo., I met a used-furniture dealer named Kittrell, now deceased, who purchased stolen television sets and other household appliances from over fifty house burglars in the St. Louis city and county area. When this fence died, he owned one of the largest furniture stores that sold new furniture which he was able to purchase from dealing with house and apartment type burglars. I knew this man for fifteen years, yet he was never arrested, and was considered by the community a legitimate businessman. Police had to be aware of his unethical actions, yet he operated unmolested for years, dealing solely in stolen merchandise."

Barnes's second illustration was even more graphic and dealt with the caper that landed him in prison. He wrote: "In Washington, D.C., one jeweler named Harry Klein supplied me with over 150 names, addresses, amount of jewelry on the premises, time the family worked, telephone numbers of the home; he then purchased the stolen jewelry for about 10 per cent of its actual value after I had burglarized the residents. The fact remains, if I had not been given these addresses by this so-called legitimate businessman those families would still possess their jewelry today. Yet when this man was convicted for all his unethical dealings, he was sentenced to sixteen to forty-eight months in prison. I was sentenced to thirty-two years. . . ." In Barnes's view, such inequity in punishment demonstrates the inability of

justice to distinguish between the minor and the major offender.

It is the major offender, the fence of all types, but especially the master broker-fence, who is now the special target of the Senate committee. Electric typewriters disappear from federal offices almost daily; colored television sets are hijacked by the carload; furs, jewelry, expensive clothing have always been prime targets; and now there is even large-scale fencing of raw materials like brass, copper and steel, stolen by the carload from one manufacturer and fenced to another.

In a world in which virtually everything gets stolen and fenced, there are occasional slip-ups, some of which nevertheless have far-reaching and disastrous results. One such episode involved a Midwestern manufacturer and the town in which his plant was located. It was late September, and the manufacturer was assembling bicycles for the upcoming Christmas rush at Sears Roebuck and Montgomery Ward. He had ordered a truckload of front wheels, but the shipment never arrived. It was hijacked, most probably by mistake, for it seems unlikely there would have been a roaring underground market for front wheels.

The lost cargo was worth only \$30,000, but its disappearance escalated the loss into astronomical figures. The manufacturer could not replace the vanished wheels soon enough to fulfill his Christmas orders. Unable to deliver the bicycles, his contracts lost, he was still faced with the mortgage payments on his factory, the cost of materials for the mass of half-finished bicycles, his payroll. Working on a narrow margin of profit to begin with, he could not cope with a financial disaster of this scale. He had to close down his plant temporarily; he had to lay off workers. They had to apply for unemployment compensation. Evans says, "We have calculated that the overall costs to the manufacturer, his workers in lost wages, the drying up of buying power in the town, and unemployment payments turned this \$30,000 loss into a multi-million-dollar disaster."

This, it is true, was an exceptional case; but it is also true that the costs of multibillion-dollar fencing multiply into sums many times the value of the loot. "The best rule of thumb," Chet Smith says, "is that for every \$1 of direct loss, there is from five to seven times that much in indirect loss down the road. And, of course, everybody pays. Legitimate business has to make up for the loss of hijacked cargoes; insurance companies have to pay out, and their premiums go up—and in the end, of course, all of these costs are passed on to the consumer who has to pay more for almost everything he buys."

What can be done about this fencing racket that so often merges the underworld with some of the most respected names in legitimate business? A bill that Senator Bible sponsored in the last session of Congress would give victims of the fencing system the right to bring civil suits for triple damages in federal district courts against anyone who has received stolen goods. Senator Bible argued that this civil approach, making the ever sensitive pocketbook especially vulnerable, could act as a powerful deterrent in a field where the criminal law is often frustrated.

The Senate passed Bible's bill by a vote of 81 to 0, but the House failed to take action as Congress rushed toward adjournment. The March-April hearings, which are expected to put together a specific picture of fencing operations, are seen as a way to build public and Congressional support for the measure that failed last year.

Meanwhile, in a letter to the Governors of forty-nine states, Senator Bible has urged the passage of state legislation modeled after his triple-damage cure. California has already adopted such a measure, and Bible encour-

aged the other states to follow suit. In his message to the Governors, he wrote:

"Without a fence to purchase stolen goods, thievery becomes practically a meaningless, profitless act. If a thief does not have a buyer or a fence to resell the billions of dollars' worth of commodities stolen annually, that 'hot cargo' is more difficult to disperse profitably. Major thievery will not decline until the profit is taken out of it by putting the purchaser of stolen goods out of business by drying up his market." □

ON WARS AND TREATIES

The Constitution Is Clear Enough

RAOUL BERGER

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It is a cliché of scholarship that in America we tend to transform every political question into a constitutional question. Inescapably, how and by whom power is exercised under a Constitution which carefully distributed power among separate departments, presents a "political question," though not necessarily in a narrow partisan sense. At the time of the invasion of South Korea, Secretary of State Acheson remarked that "the argument as to who has the power to do this, that, or the other thing, is not exactly what is called for from America in this very critical hour." One who is superbly confident that he alone knows all the answers not unnaturally resents a challenge to his authority to act. Nevertheless, the disposition to question the extent of any given power is sound; and it is deeply rooted in our history. Just emerged from a struggle with one tyrant, the founders, as Bagehot stated, were determined not to substitute another. They feared the threat to liberty posed by the greedy expansiveness of power, and therefore framed a Constitution which distributed power and limited all grants. Jefferson reflected the general sentiment when he said that those to whom power was confided must be bound "down from mischief by the chains of the Constitution." Our generation has witnessed the malign excesses of uncurbed power; and it is no reproach to those who question the authority of the President single-handedly to plunge the nation into war that they turn to the Constitution for an answer.

For Arthur Schlesinger, Jr., in "Congress and the Making of American Foreign Policy" (*Foreign Affairs*, October 1972), there is no "zone of clear-cut constitutional prescription" with respect to the "war power and the treaty power"; these present issues that "are, and must remain, political questions." His article affords a fascinating glimpse of the difficulties that beset scholars

who convert constitutional issues into partisan questions and veer interpretively with the shifting political wind. "We must restrain our national propensity to cast political questions in constitutional terms," he admonishes. "Just as in other years we went too far in devising theories of spacious Presidential power because we agreed with the way one set of Presidents wanted to use this power, now we are likely to go too far in limiting Presidential power because we disagree with the projects of another set of Presidents." He handsomely confesses that he was among those "who labored to give the expansive theory of the Presidency due historical sanction."

When Sen. Robert Taft stated that

The President simply usurped authority, in violation of the laws and the Constitution, when he sent troops to Korea to carry out the resolution of the United Nations in an undeclared war. . . . I do not believe the President has the power without Congressional approval to send troops to one country to defend it against a possible or probable attack by another country

he spoke truths that had to wait for another generation of scholars, spurred by the war in Vietnam, to demonstrate. At the time, Schlesinger reminds us, Henry Steele Commager stated of the principles invoked by Taft, "that they have no support in law or in history." And Schlesinger relates that he himself, "with a flourish of documentation and, alas, hyperbole, called Taft's statements 'demonstrably irresponsible.'" In the fullness of time both men have recanted. "Professor Commager has, in effect, accepted the Taft-Coudert case in his testimony in favor of the War Powers Bill"; and Schlesinger adds that he too "would freely concede that Senator Taft had a more substantial point than [I] had supposed twenty years ago." To explain this "vacillation," Schlesinger says in part, "It is agreeable to claim constitutionality for policies one supports and agreeable too to stigmatize policies one opposes as unconstitutional."

Such tergiversation may be expected of administrations which issue self-serving interpretations of the Constitution. More is demanded of a scholar. But Schlesinger brings into his article fresh "flourishes of documentation" to show that the war and treaty powers fall outside

the "zone of clear-cut constitutional prescription," thereby conducing to more result-oriented interpretations, which make of the document an accordian that interpretive virtuosi expand or contract at will.

Against this I submit that the overblown Presidential claims to sole war power and monopoly over foreign relations can be assayed in strictly constitutional, as distinguished from partisan, terms. Only a law journal would allow the full documentation the historical materials permit; but enough can here be set forth to serve as a basis for judgment and to remove some of the clouds of "ambiguity" that obscure analysis. But first a demonstration that Schlesinger has delivered himself of fresh "flourishes of documentation."

Consider first his quotation from Justice Jackson's "brilliant opinion in the *Steel Seizure* case," where Jackson referred to a "zone of twilight in which [the President] and Congress may have concurrent authority, or in which its distribution is uncertain." In that very case however, Jackson experienced no difficulty in emphatically rejecting inflated Presidential claims to war powers; in fact he took pains to show that Congress can remove an issue from the "zone of twilight" by enactment of a statute. Even, therefore, where they have "concurrent powers," when Congress acts, its power rises above that of the President.

Again, Schlesinger states that

Washington rejected a request from the House of Representatives that he turn over copies of instructions and other papers relating to the Jay treaty. Though he based his refusal on the narrow ground that the House was not involved in the treaty-making process and that all the papers affecting the negotiations with Britain had already been laid before the Senate, he established a larger precedent that future Presidents used to deny information to the Senate as well. (*Emphasis added.*)

Undeniably, recent Presidents have invoked this incident as a precedent for refusing information to the Senate; those who strive for more power will grasp at any straw for justification. But why should a scholar conclude that the incident "established a larger precedent" for that purpose? Denial of the information to the House because it had no "right" to it, accompanied by delivery to the Senate which had such a "right," constituted recognition of the Senate's "right" and is therefore poles removed from a *precedent for refusal to the Senate*. Scholarly distillations of "established precedent" from such unpromising material give currency to the "spacious" and mistaken readings of Presidential power which Schlesinger now disavows.

Another inexact statement is Schlesinger's assertion that the "President through the executive power, and the constitutional injunction that 'he shall take Care that the Laws be faithfully executed,' " has "an undefined residuum of inherent authority on which to draw" in the areas of the "war power and of the treaty power." If this means that a "residuum" of war power inheres in the "executive power," James Wilson and James Madison laid down the contrary in the Constitutional Convention: "executive powers . . . do not include the Rights of war & peace." That is confirmed by the fact that

the framers stepped outside the "executive power" to make the President "first General" through the medium of the "Commander in Chief" clause.

In framing a government of limited and enumerated powers, the founders left no room for a claim to extra-constitutional "inherent" power. What was not given was meant to be withheld. Though Wilson was the "leader of the 'strong executive' party," he stated that the "only powers he conceived strictly executive were those of executing the laws and appointing officers. . . ." Citations to the same effect can be multiplied. As to the President's duty faithfully to execute the laws, Justice Holmes declared that it "is a duty that does not go beyond the laws." He has been followed in the *Steel Seizure* case by Justices Black, Douglas, Frankfurter and Jackson. Were Congress therefore to enact a law limiting Presidential war making—for example, the Javits War Powers Bill—the President could scarcely invoke his duty to execute the laws in order to justify disobedience of that law. No residual war power, it cannot be unduly emphasized, can be wrung from the "executive power."

A final "flourish of documentation"—Schlesinger's use of a quotation from Hamilton in Federalist No. 23. Here Schlesinger juxtaposes his own comment that "The Constitution itself is cryptic and ambiguous in its allocation of powers affecting foreign policy," with Hamilton's statement that "It is impossible to foresee or define the extent and variety of national exigencies." This suggests that the distribution of foreign policy powers between the President and Congress was purposely left "ambiguous" because it was impossible to foresee the "variety of national exigencies." Hamilton, however, was defending the vesting of those powers in the federal government rather than the states; he did not remotely touch on the allocation of those powers between President and Congress. Future exigencies required *federal* exercise of power over foreign relations, not that the allocation *within* the federal government be left "ambiguous."

It is now time to turn to the Constitution itself. What it provides and how the founders understood those provisions, not what others have said about it, is the best index of constitutional meaning. Jefferson read the Constitution according to the "plain understanding of the people at the time of its adoption—a meaning to be found in the explanations of those who advocated it." If "that be not the guide in expounding it," said Madison, "there can be no security for a consistent and stable government, more than for a faithful exercise of its powers." The wisdom of Madison is attested by the "vacillation" of those for whom the distribution of powers presents a "political question" that may be answered differently as the political weather vane turns.

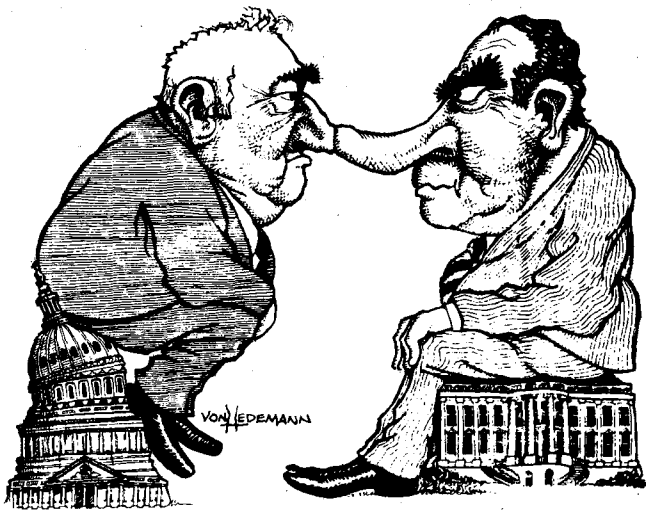
What first strikes the eye on examining the several provisions respecting the war powers is the vast disproportion between the numerous war powers granted to Congress and the single power, that of "Commander in Chief," granted to the President. The President, said James Wilson, second only to Madison as an architect of the Constitution, has "authority to lead the army," whereas:

The power of declaring war, and the other powers naturally connected with it, are vested in Congress.

To provide and maintain a navy—to make rules for its government—to grant letters of marque and reprisal—to make rules concerning captures—to raise and support armies—to establish rules for their regulation—to provide for organizing . . . the militia and for calling them forth in service of the Union—all these powers are naturally connected with the power of declaring war. All these powers, therefore, are vested in Congress.

To this may be added that Congress is also empowered to “provide for the common defense” and to make appropriations for the foregoing purposes. Since all the powers “naturally connected” with that of declaring war are vested in Congress, it follows that they are not to be exercised by the President. So, in fact, a number of founders expressly stated.

To overcome “aversion” to the grant of “monarchical” powers to the President, Hamilton, as Schlesinger notices, was constrained to emphasize in Federalist No. 69 that the Commander in Chief clause “would amount to nothing more than the supreme command” of the armed forces. It merely conferred a power to act as “first General”; more concretely, as Hamilton had proposed in the Convention, to have “the direction of war when authorized or begun.” This note was repeatedly sounded in the Convention: the President would have no power to “commence” a war, but at most a power, in the words of Madison and Elbridge Gerry, “to repel sudden attacks” on the United States. While this, Schlesinger correctly states, “allowed the President to respond when



war was imposed on the nation, it was certainly not understood as giving him power to initiate hostilities.”

Wilson told the Pennsylvania Ratification Convention that the power to “declare” war was lodged in Congress as a guard against being “hurried” into war, so that no “single man [can] involve us in such distress.” As Schlesinger notes, Madison wrote Jefferson in 1798:

The Constitution supposes, what the history of all Govts. demonstrates, that the Ex. is the branch of power most interested in war, & most prone to it. It has accordingly with studied care vested the question of war in the Legisl.

And Schlesinger correctly states that wars, “whether

solemn [accompanied by declaration of war] or non-solemn, complete or limited, were deemed to require some mode of Congressional authorization.”

By his own testimony, therefore, the Constitution, construed in light of the intention of the framers (a procedure that governs the interpretation of all documents), does furnish an answer to what Schlesinger calls “the real issue. . . . Congressional authorization—whether or not by declarations of war—of the commitment of American forces in circumstances that involve or invite hostilities against foreign states.” On the crucial issue whether the President is empowered to “commence” war except to repel a sudden attack on the United States, the Constitution does afford a “zone of clear-cut constitutional prescription,” a non-“political” answer which need not be revised to conform to current approval or disapproval of a given war.

That the “original meaning” of the Constitution is as above outlined is hardly disputed. The State Department itself has conceded that the framers had a limited view of the President’s war powers. Commenting on the Madison-Gerry statement that the President would be empowered to “repel sudden attacks,” the Legal Adviser of the State Department has stated, “In 1787 the world was a far larger place and the framers probably had in mind attacks upon the United States. In the 20th century the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation’s security.” But the apparent size of the globe is not the issue; what is at issue is: who shall make the judgment that the nation’s interests are so vitally affected as to require commitment of the armed forces to battle? The answer of the Constitution, powerfully stated by Madison in 1793, leaves no doubt on that score:

Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including the *power of judging of the causes of war, is fully and exclusively vested in the legislature*; that the executive has no right, *in any case*, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, *is all the right* which the constitution has deemed requisite or proper. . . .

The Presidential claim to a right to make that judgment alone, without consulting Congress, is not rested on the text of the Constitution as understood by the founders, but upon a series of “incidents” in the 19th century. The “vast majority” of such cases, said Edward Corwin, “involved fights with pirates, landings of small naval contingents on barbarous or semi-barbarous coasts [to protect American citizens], the dispatch of small bodies of troops to chase bandits or cattle rustlers across the Mexican border.” As Schlesinger points out, these were not directed against a sovereign nation and posed no risk of war. Upon the basis of a tide of such incidents, Acheson advised President Truman that he need not ask Congressional approval before committing troops to repel the invasion of South Korea, but

could "rest on his constitutional authority as Commander in Chief." But that authority, it has been seen, merely permitted him to serve as "first General" once Congress had declared war or the United States was attacked, not himself to "commence" war in a foreign land.

The "incidents" were thoroughly deflated by Francis Wormuth [see Wormuth: "Presidential Wars: The Convenience of 'Precedent,'" *The Nation*, October 9, 1972] and they receive still another going-over at the hands of Schlesinger. When he states that "History offers the lawyer or scholar almost any precedent he needs to sustain what he may consider, in a concrete setting, to be wise policy," he cannot be referring to the founders' understanding of the constitutional provisions but rather to these, in his own words, "mostly trivial episodes." Acheson's use of them as "precedents" for the exercise of "Presidential power to send our forces into [full-scale] battle" in Korea should be enough to engender profound distrust of self-serving executive readings of Presidential powers. At best, these "precedents" add up to a claim that the President, by his own practices, may alter the constitutional distribution of powers. But since few would maintain that he can revise the Constitution by proclamation, why should his "practices" rise higher? Nor can Congressional acquiescence advance the Presidential argument, because the people alone, not Congress and not the President, can amend the Constitution.

To escape from the bonds of the Constitution, apologists for Presidential expansionism resort to "adaptation by usage." The process of amendment, so runs the theory, is so cumbersome that "adaptation by usage" became essential; more simply, because it is difficult to procure an amendment, the servants of the people assert a right to amend the Constitution without consulting them! "Adaptation by usage" is thus a label designed to render palatable successive usurpations whereby the President has taken over powers conferred upon Congress and intentionally withheld from him.

The theory has found favor with academicians but not with the Supreme Court; usurpation, the Court has held, is not legitimated by repetition. One who regards the Constitution as an enduring charter of government, who considers that the "separation of powers" remains a bulwark against tyranny, cannot under any guise accept a free-wheeling exercise of power in disregard of the Constitution. Let it be assumed—however dubious—that the President alone is qualified and equipped to decide that armed intervention abroad is required; even so, the issue, not masked by euphemisms, should be submitted to the people: shall the President on his own initiative be permitted to commit the nation to war because he believes that distant events "impinge on the nation's security"? If Vietnam has taught nothing else, it has shown that those who are to pour out their blood and money in such a cause must be consulted, minimally through their representatives in Congress. This is not merely a constitutional requirement; to ignore it is to risk a divided nation on occasions when only unity of purpose will serve. We need also to recall Washington's advice that even if "usurpation . . . in the one instance may be an

instrument of good, it is the customary weapon by which free governments are destroyed."

Apparently Schlesinger's statement that "we are likely to go too far in *limiting* Presidential power because we disagree with the projects of another set of Presidents" derives from his misgivings about the Javits War Powers Act, passed by the Senate by a vote of 68 to 16. Roughly speaking, the bill would authorize the President "to repel an armed attack upon the United States, or upon its armed forces located outside the United States." The former provision is merely declaratory of the constitutional purpose; it would restore the original distribution of powers, and therefore does not "limit" the President's constitutional powers. The latter provision, plus a provision that authorizes the President to "forestall . . . imminent threat of such an attack," *enlarges* the President's powers, drawing on the plenary powers vested in Congress by the Constitution. Whether or not these limits are unwise, as Schlesinger believes, has no bearing on the issue of constitutional authority to enact such a bill. If power be conferred on Congress, the fact that it may be unwisely exercised does not negate the constitutional grant. For, as Marshall said, "The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional."

Presidential claims to a monopoly on the conduct of foreign affairs are also of tremendous importance; four times in this century the nation has been drawn into war by Presidential management of foreign affairs. Here too we are faced with the view that this is an obscure area of the Constitution. Schlesinger states that "The Constitution itself is cryptic and ambiguous in its allocation of powers affecting foreign policy." But though Corwin and others shared that view, one can demonstrate that there is no ambiguity whatever as to the core of the matter: the requirement of full Senate participation in the fashioning of foreign policy.

The constitutional provisions which confer power upon the President in this area are three, only one of which is confided to the President alone: the authority to receive ambassadors or ministers. This, Hamilton explained in *Federalist* No. 69, is "more a matter of dignity than authority," "without consequence," in order to obviate the "necessity of convening the legislature . . . upon every arrival of a foreign minister. . . ." Obviously, that is a slender reed upon which to rest a claim of monopoly of foreign relations. The other two Presidential powers—to appoint ambassadors and to "make" treaties—are conditioned upon the "advice and consent" of the Senate, which is thus intended to participate in these acts. In addition, Congress is given the exclusive power "to regulate commerce with foreign nations . . . to control naturalization and immigration," as Schlesinger observes, plus the power to lay duties and thus control tariffs. Thus commercial and tariff treaties are primarily an object of Congressional concern. If we look to the aggregate of powers that affect foreign relations, a very significant share was confided to Congress.

What does Senate "advice and consent" to the making of treaties connote? "Advice" which is sought after the President has made a treaty comes too late—at that junc-

ture the Senate is confronted with the alternative either to consent to an objectionable treaty or to reject it, with consequences, for example, such as followed Senate rejection of the Woodrow Wilson's Versailles treaty. If the provision for "advice," therefore, is not to be superogatory, it must be read to allow Senate "advice" before and during the making of the treaty, to contemplate participation in its making. That this was the intention of the founders is made clear by the records of the several Conventions.

First a word about the 17th-century English background which so strongly influenced the colonists. During that period the House of Commons won a large share in the making of foreign policy; and by the Hanoverian period, says E. B. Turner, the "participation of parliament in foreign affairs and even its supervision of them . . . was fully recognized. . . ." When the colonists assembled in the Continental Congress they dispensed with an Executive altogether and appointed a Secretary of Foreign Affairs whom they kept under a tight rein, even to the express provision that his books and records were to be open to every member of Congress. Thirty of the fifty-five members of the Constitutional Convention had been members of the Congress, and they began by following its practice: as late as August 6 they left to the Senate the "power to make treaties." Madison then suggested that the "President should be an agent in Treaties"; and in the upshot, as Rufus King remarked, the President was "joined in the business" as a "check" on the Senate. This history precludes an inference that the President was to displace the Senate and to exclude it from any part of treaty making.

The Ratification Conventions were given to understand that the Senate, without qualification, was to participate in the making of treaties. These representations are to be viewed against the popular "aversion" to the grant of "monarchical" powers to the President, which led Hamilton to downgrade the meager grants of executive power. Nothing was "to be feared," he said in Federalist No. 71, from an Executive "with the confined authorities" of the President. A few examples from the state Conventions must suffice. In New York, Chancellor R. R. Livingston said that the Senate "are to form treaties with foreign nations"; so did Samuel Spencer in North Carolina. Hamilton told the New York Convention that the Senate, "together with the President, are to manage all our concerns with foreign nations." Except for occasions when secrecy and dispatch call on the President to "start the ball rolling," so Corwin reads John Jay in Federalist No. 64, "all negotiations of treaties will be the joint concern of President and Senate." Certainly Washington, who had presided over the Convention, "adhered to the practice of asking the advice of the Senate before negotiations were opened and during their course." The records of the several Conventions, it may be safely affirmed, disclose an understanding by the founders that the Senate was to participate in "making" treaties, not merely to ratify them after they were made by the President.

More recently, Presidents have resorted to executive agreements to circumvent the necessity for conferring

with the Senate in treaty making. "Ways had to be found," explains Schlesinger, "to evade the veto by one-third of the Senate." No mention of executive agreements is made in the Constitution nor in the several Conventions; and the reason is not far to seek: treaties were understood to be all-encompassing, rendering provisions for any other form of international agreement unnecessary. Hamilton's testimony suffices:

. . . it was understood by *all* to be the intent of the [treaty] provision to give that power the most ample latitude—to render it competent to *all the stipulations* which the exigencies of national affairs might require; competent to the making of treaties of alliance, treaties of commerce, treaties of peace, and *every other species of convention* usual among nations. . . . And it was emphatically for this reason that it was so carefully guarded; the cooperation of two-thirds of the Senate, with the President, being required to make any treaty whatever.

Since the treaty-making provision covers the field, no room is left for executive agreements. In the words used by Justice Jackson in the *Steel Seizure* case, where Congress had less clearly pre-empted the field, the Presidential claim of power to make executive agreements is "clearly eliminated." On the historical facts, the question, in the words of Philip Kurland, is, "Should the Constitution really be read to mean that by calling an agreement an executive agreement rather than a treaty, the obligation to secure Senate approval is dissolved?"

Two facts which clinch the answer may be noted. In the North Carolina Convention, William Davie, a framer, explained that because of "the extreme jealousy of the little states" it "became necessary to give them absolute equality [in the Senate] in making treaties," a statement confirmed by another framer, Richard Spaight. Now to conclude that secreted in the recesses of Presidential powers, represented to be so "confined and defined," is an authority to enter into executive agreements that by-pass "little-state" participation in a Senate veto is to betray the "great compromise" that won their adherence. Further, it flies in the face of common sense to deduce that the framers, after taking great precautions, as James Wilson put it, to place it beyond the power of a "single man" to involve us in war, then unraveled all their labors by giving practically uncheckable control of foreign policy, which can plunge the nation into war, to that very "single man." The notion is repelled by Schlesinger's quotation from Hamilton:

The History of human conduct does not warrant that exalted opinion of human virtue which would make it wise to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.

To maintain that the President, merely by changing the label from "treaty" to "executive agreement" may now entirely take over these "delicate and momentous" interests to evade a Senate veto is to reduce the Constitution to a "scrap of paper."

Schlesinger agrees that "efforts to bring executive agreements within Congressional purview and to induce

the Executive to submit major agreements in the form of treaties are long overdue." But, he continues, "the notion that executive agreements must be rigorously confined to minor matters and that all important international undertakings must be subject to Senatorial veto would bring us back to the frustrations of Olney and Hay."

Even greater Congressional frustrations and Presidential excesses have resulted from the other swing of the pendulum. These are questions of wise policy, not of constitutional power. The historical record shows that "every species of convention" was made subject to Senate "advice and consent." If there "has to be a middle ground between making the American President a czar and making him a puppet," as Schlesinger concludes, who is to draw the line? Presidential excesses in the use of executive agreements caution against remitting decision to the President. Nor do the judgments of scholars who have labored on behalf of Presidential expansionism, to go no further than the Commager-Schlesinger record of "vacillation" with respect to Presidential war making, inspire confidence. The people have yet to indicate that they are ready for a government by Plato's philosopher-kings. A safer mooring is afforded by Hamilton, that pioneer advocate of broadly read Presidential powers, who nonetheless could say with respect to the treaty power:

An agent cannot new-model his own commission.
A treaty, for example, cannot transfer the legislative power to the executive department.

What is denied to Senate and President acting in concert is no more given to the President acting alone.

It is not possible here to attempt more than a bird's-eye view of the constitutional problems presented by the President's exercise of war and foreign policy powers. There are issues such as whether Congress may limit the deployment of forces in foreign spots and thus obviate a standing invitation to hostilities. There is the withholding of information from Congress under the doctrine of "executive privilege," as to which I am in hearty agreement with Schlesinger, who deplores the practice. There is the nagging fact, justly underscored by him, that the present imbalance is largely attributable to Congressional renunciation of responsibility. And it may be that Congress will continue, in this area as in others, to lose power by default.

But that the power *exists* in Congress to restore the constitutional balance, to limit Presidential adventurism in foreign policy and war, seems to me not at all wrapped in "ambiguity." It needs to be brought home to the American people that the Korean and Vietnamese conflicts represent an unconstitutional exercise of power, tested by the text and history of the constitutional provisions, not by partisan predilections.

Washington, it will be recalled, cautioned against "usurpation," which in a given instance might be the "instrument of good." More liberal than Washington, Schlesinger concludes that "Emergency may compel [the President] to abandon the rule in favor of the exception; but he must not pretend—as Jefferson, Lincoln and Roosevelt declined to pretend and as Johnson and Nixon have pretended—that the exception is the rule." But as

Washington foresaw, the melancholy lesson of "emergencies" is that the exception almost invariably becomes the rule. Schlesinger would put his trust in the self-restraint of the given President; I prefer the "chains of the Constitution" because it is the fact that power tends to corrupt and that reliance on self-restraint is delusory.

Can the President in fact be bound by the "chains of the Constitution?" Essentially that is what happened in the *Steel Seizure* case when the Supreme Court set aside Presidential action in a field where Congress had indicated its will. Were Congress to enact the Javits War Powers Bill, for example, to restore the constitutional limits on Presidential war making, and were the President to act in defiance of the statute, a clear-cut boundary dispute between Congress and the President would be presented. Neither branch, said Madison, has "an exclusive or superior right of settling the boundaries between their respective powers." That function, he stated, after a lifetime spent in government, must fall to the courts. A clash which goes to the heart of the separation of powers inescapably calls for impartial judicial arbitrament. For the courts to decline to take jurisdiction would be to invite Congress to take the bit in its own teeth and, assuming the necessary votes, turn to the process of impeachment. Though it is an impeachable offense, as Blackstone stated, to act "in contradiction of the laws," the spectacle of the Senate sitting in judgment on Presidential disobedience of a law claimed to encroach on his prerogatives, as in the impeachment of Andrew Johnson, offends against the basic tenet that no man should sit in judgment on his own cause. No less than the lowliest felon, the President is entitled to have the issue—whether or not the law he is charged with defying is constitutional—impartially adjudged. Even the stubborn Andrew Johnson preferred to submit the issue presented by his disobedience of the Tenure of Office Act to the courts rather than to the Senate which had passed the Act. And Chief Justice Chase considered that the issue should have been heard in the courts.

It may be thought that Justice Jackson's statement in the *Korematsu* case, quoted by Schlesinger, speaks against judicial review:

... the chief restraint upon those who command the physical forces . . . must be their responsibility to the political judgments of their contemporaries and to the moral judgments of history.

In that case the Supreme Court reviewed and sustained action in which Congress and President *concurred* respecting relocation of American citizens of Japanese ancestry resident on the West Coast. Jackson dissented on the ground that the action constituted an unconstitutional discrimination based on race and that the courts should not lend their process to enforcement. He therefore posited the availability of judicial review. Given a *dispute* between Congress and the President, particularly on so momentous an issue as unauthorized war making, we may expect, as happened in the subsequent *Steel Seizure* case, that the Court will not delegate the issue to history. To the maimed and dead in Korea and Vietnam that judgment is of little moment. Such considerations, allied to the threat to our tripartite system of government, cannot safely be ignored by the Court. □

THE CUBANS OF PUERTO RICO

RONALD WALKER

Mr. Walker is editorial page editor of The San Juan Star.

San Juan

In this usually hospitable island commonwealth of some 2.8 million people, I've heard more than one Puerto Rican say, "He's a Cuban, but he's a good guy." That same Puerto Rican, if he migrates to New York's Spanish Harlem or to Boston's slums (seeking a job which often isn't there; so he winds up on welfare or returns to the island), may well run into subtle and not so subtle racial and ethnic prejudice in the United States. But it's not quite fair to say that at home he's practicing reverse prejudice on the thousands of Cuban exiles who have settled here since Fidel Castro took power more than a decade ago. It's more a phenomenon of resentment, compounded by perplexity. But it is a growing concern.

According to the latest figures, 52,991 foreign-born persons were living in Puerto Rico in 1972, and the U.S. Census Bureau found about 26,000 Cubans living here in 1970. But the influence of those 26,000 is far out of proportion to their relatively small numbers. While most of those who fled Cuba exiled themselves, at U.S. encouragement, to Miami, New York and Spain, an articulate, middle-class, upwardly mobile, managerial-oriented group chose Puerto Rico; apparently because the climate and the language were similar to those of their homeland. In fact, the Cubans are but the latest of a series of essentially conservative, propertied exiles from other Latin countries who have fled to Puerto Rico to escape revolution and social upheaval. These recurrent waves of immigration have helped to make Puerto Rico a relatively conservative island in life style and ideology (despite the liberal orientation of the ruling political party).

But while Puerto Rico has only recently begun to produce an effective middle class (its per capita income is well below that of Mississippi), the Cubans have come directly into many of the "better" jobs in advertising, public relations, entertainment, television and many of the service industries. A successful lawyer in Havana

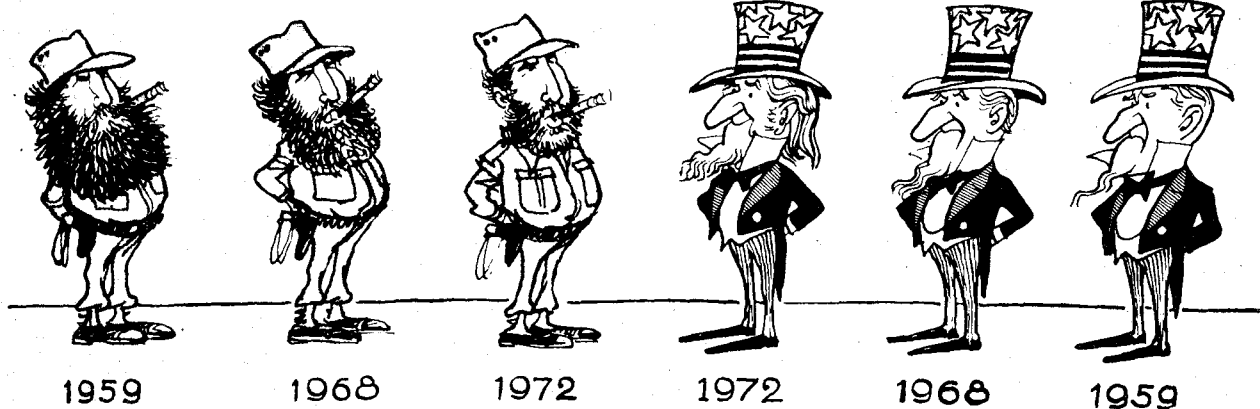
may have begun in San Juan selling used cars in a shabby car lot, but you can bet he's not selling used cars now. He may own a chain of used-car lots, or he may be in private law practice—or in any number of businesses that, frankly, have often outperformed their Puerto Rican counterparts.

The Cubans say their hard work and the marketable skills they brought from Cuba are what propelled them so rapidly to the top. Perhaps so, but many Puerto Ricans resent the high visibility of the Cubans, and can be heard protesting that they are "becoming strangers in their own country." Adding to the tension is the fact that, since Puerto Rico is a semi-autonomous "commonwealth," the United States regulates its immigration (the procedure also allows Puerto Ricans, as U.S. citizens, automatic entrance to America). And the United States made possible—by its "freedom flights" and other means—the wholesale Cuban exodus of the 1960s.

The result has produced a curious double negative in Puerto Rico. While there is no overt discrimination, there is certainly a growing undercurrent of resentment against Cubans, many of whom have become U.S. citizens here and have tried to integrate themselves into the social fabric. But some Cubans have not, and this alleged "clannishness" seems to have upset many Puerto Ricans.

The new administration of 36-year-old Gov. Rafael Hernandez Colón—himself a liberal who supported Sen. George McGovern at the 1972 Democratic National Convention—has been sending out signals to the effect that Puerto Rico must soon consider limiting the number of foreigners who can settle here. But the commonwealth's legendary former governor, Luis Muñoz Marín, noted in an interview in February that "there is a growing feeling that the Cubans are creating a problem here, but I don't think it's a big problem now. I don't think we should exercise any restrictions on foreigners unless the situation becomes extreme."

Francisco Aponte Perez, past president of the Puerto Rico Bar Association, commented in his *San Juan Star* column in January that on the island today, "A tower-



Valtman, Hartford Times

ing image and presence of foreign-borns is felt everywhere in industry, commerce, finance, arts, politics, trades and services. There is a local instinctive fear of displacement and lack of power to deal with the problem." When he mentioned "foreign-borns" most Puerto Ricans automatically took him to mean "Cubans." Aponte Perez then argued that the commonwealth should develop its own immigration policy by negotiation with Washington.

But that is a long-range approach. In the short term, the outlook is for the much-discussed "Cuban problem" to become more severe. For the Cubans, it is a real dilemma. Puerto Rico was supposed to be for them the ideal asylum. They are for the most part highly critical of Castro ("he betrayed the Revolution" is often heard), and the only people here who openly support the Cuban Premier are the numerically small *independentistas*, some of whom have direct links with Havana. The typical Puerto Rican values his U.S. citizenship and, when asked why he wouldn't vote *independentista*, will often say he doesn't want Puerto Rico "to become another Cuba."

Some Cubans in Puerto Rico will even suggest, when asked, that there are trends at work in Puerto Rico that could lead to a Castro-type situation. Nobody takes that forecast very seriously, except perhaps some of the more rabidly conservative members of former Gov. Luis A. Ferré's statehood-oriented (and GOP-affiliated) New Progressive Party, which ruled from 1968 to 1972. There was a significant Cuban influence in Ferré's unsuccessful re-election bid last November, particularly in the publicity, advertising and polling side of his campaign. Ferré's party lost seventy-two of Puerto Rico's seventy-eight municipalities and both houses of the legislature.

Meanwhile, Cubans who once seriously thought they could somehow "invade" Cuba and overthrow Castro, have fallen into resignation and some bitterness toward the United States. Many are simply content to live their lives out in Puerto Rico, enjoying the bourgeois life of the Atlantic Ocean-front condominiums, homes and social clubs. Gone are the days when exile guerrilla movements like "Alpha 66" used Puerto Rico as a base for plans to "liberate" Cuba. The whole effort went down the drain in the Bay of Pigs fiasco.

Now another possibility begins to emerge. The obvious fact is that Castro has solidified his position. Despite his faults, despite Cuba's client-state relationship with the Soviet Union, he has institutionalized the revolution in Cuba, and no amount of wishful thinking or rhetoric by exile groups abroad is going to change that fact. It becomes apparent that before long Washington will reach some accommodation with Castro, and the exiles here are slowly beginning to accept that probability.

Some of them invited President José "Pepé" Figueres Ferrer of Costa Rica to speak to them here in January, but Figueres—long a member of Latin America's "Democratic Left"—didn't inveigh against Castro, as expected. Instead, he told the exiles to start thinking about opening up a dialogue with the Castro government. After all, if President Nixon can visit Peking and strengthen ties with Moscow, can Cuba be far behind? Alberto Rodriguez, a young Cuban exile who heads a group in Puerto Rico which seeks to negotiate with Castro, wel-

comed the surprising Figueres speech and said that the attitude prevailing among many exiles here, that negotiation with Castro would be a sellout, is fading.

Castro himself is responding to the feelers. He has authorized a group of Havana residents to confer with Cuban exiles sympathetic to a rapprochement, and a preliminary meeting is expected at Montego Bay, Jamaica, in early April. Not everybody in the Byzantine-like exile community here favors such a meeting. Young Rodriguez's suburban home was fire-bombed in January, his new car being demolished in the blast. But if the "Conference of Montego Bay" comes about, it could, according to Rodriguez, clarify Castro's position about the possible return to Cuba of many exiles and the creation of a recognized political opposition.

An estimated 750,000 Cuban refugees live here, in the United States, Spain, Venezuela, Mexico, the Dominican Republic, Costa Rica and elsewhere. Trying to get some one organization to speak for them all is impossible. Indeed, the People's Revolutionary Party, recently created here by one exile group, has denounced the Jamaica conference and said that insurrection inside Cuba is the only viable alternative for opponents of Castro. The PRP, which was born in Costa Rica in December, includes among its Puerto Rican members Manolo Ray, who was Castro's first minister of public works.

To many Puerto Ricans, all this Cuban exile internecine warfare seems a futile fantasy and perhaps still one more reason why "they" seem so remote from "us" and "our" very serious problems and attitudes. Indeed, a rumor swept Puerto Rico last November that unless all Cuban exiles left the island by the end of that month, anything could happen. Anonymous threats were mailed to many prominent Cubans and publicized in newspapers. But nothing happened. According to Jorge L. Quadreny, president of El Circulo Cubano, the threat apparently came from "a group of resentful people who are against the democratic and anti-Communist Cubans established here." At the height of the anonymous letter-writing campaign, Senate president (and now Governor) Rafael Hernandez Colón urged police action against a group calling itself "The Anti-Cuban Commandos." Hernandez Colón declared that "the Cubans in our midst have every right to complete protection under Puerto Rican law."

In some ways, the exiles in Puerto Rico represent the whole Cuban exile picture, in other ways they don't. Unlike the estimated 25,000 to 30,000 exiles living in Spain, those here aren't trying to reach the lucrative U.S. mainland job market. They found a home here—or so they thought. It is a situation guaranteed to produce tensions, acrimony, perhaps even violence—plus, of course, the misunderstandings which are so often at the heart of such social confrontations. In Puerto Rico, the Cuban exile can't "hide," as he might in New York. He is visible, hard-working, aggressive and, increasingly, affluent. Puerto Ricans admire those traits, but they want Puerto Ricans to run the show on a small island where poverty, unemployment, overpopulation and inequities in the distribution of wealth and income are still major problems. For the Cubans, there is no easy way out. □

CONGRESS BESTOWS AMNESTY

HARROP A. FREEMAN

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There is shaping up in America today a debate on amnesty that goes to the very heart of the democratic process and the allocation of powers in government. Already, the participants are muddying the issue by inaccurate statements as to the theory of amnesty, the law applicable and the nature and number of persons to be amnestied.

President Nixon said at his first press conference of 1973, and has since repeated, that he opposes amnesty because he would not "forgive" draft avoiders, resisters, AWOLs and expatriates, who must pay the penalty for their "errors" and crimes. That is completely at variance with the purpose, theory and history of amnesty—and especially so at two points: Congress, not the President, has the power of amnesty, and it is not forgiveness for an error but forgetfulness of an offense which may have violated a law, but whose purpose was to arouse the nation politically. What the President should be talking about when he refers to "forgiving" and "errors" is his admitted power to reprieve and *pardon* (U.S. Constitution, Article II, Section 2).

Amnesty is a concept of public law, derived from the Greek *amnestia* (intentional overlooking: from the same stem as amnesia). Reprieves, on the other hand, are suspensions or delays in execution of a sentence, and pardons are forgiveness or remission of the consequences of a crime.

As early as 403 B.C. Athens forbade further action against citizens for previous political acts and required an amnesty to erase all political strife from memory. France has a long history of more than forty amnesties, coming after virtually every civil strife from 1500 A.D. through that for persons convicted of war-related crimes in World War II and the Algerian War. English amnesties date from 1600. In the first year after World War II countries as diverse as Argentina, Brazil, Canada and Bulgaria, Greece, India, Italy, the USSR and Yugoslavia, granted amnesties to political prisoners.

The United States history is worth analyzing to show how reticent we have become (compared even to dictatorships) in granting forgetfulness or forgiveness to our political offenders, and to outline how the confusion has arisen which would allow a President to pose as the final authority on whether an amnesty is to be granted. Immediately after the Revolution, Congress restored all rights to the Loyalists who had not fled to Canada. On July 4, 1794, President Washington granted "pardons" to all who participated in the "Whiskey Rebellion," and in 1800 President Adams gave a general pardon to the "house tax insurrectionists" of 1798. In the Civil War, Congress delegated to the President power to "pardon

and amnesty" those participating in the rebellion. Lincoln acted twice, Johnson four times. The Presidents labeled their action as "general pardons and amnesty" (under the Congressional delegation). Finally, in 1876 Congress passed a complete and all-inclusive amnesty.

After the Civil War both the practice and the confusion between pardon and amnesty continued. President Wilson pardoned a list of political opponents to World War I. President Coolidge remitted citizenship and civil rights to men who had deserted the armed forces between the end of World War I hostilities and the formal termination of the war. Franklin D. Roosevelt granted "full pardon" on Christmas of 1933 to all violators of the World War I draft laws and the 1917 espionage law.

World War II introduced more confusing history. At Christmas, 1945, President Truman granted a full pardon for all federal nonmilitary crimes to every World War II honorably discharged veteran. A Gallup poll of January 28, 1947 showed 69 per cent favoring general amnesty and 23 per cent opposed. The President destroyed the Congressional impetus for amnesty by appointing an "Amnesty Board." This body further diluted the effort by resolving itself into a parole board which considered the Selective Service violators case by case. Ultimately it discovered 1,523 cases of obvious injustice (out of 15,000 to 20,000 actually convicted), who were thereupon pardoned by the President. After America entered the Korean War, there were again two strong demands for amnesty. Instead, the President proclaimed pardons to veterans honorably discharged with one year's service and remitted citizenship and civil rights to all persons convicted of military desertion. From such actions has grown up a considerable popular confusion between pardon and amnesty. There should be no legal confusion.

English history, from which we derive our theories of government, confirms that pardon is an executive function, but that the amnesty power belongs to Parliament or the people (in America covered by Amendments Nine and Ten). Amendment Fourteen, Section 3, adopted after the President-Congress conflict of the Civil War, clearly assumes that the power of amnesty is vested in Congress. Mr. Nixon may want to pardon persons already convicted (he seems much more favorable to a Calley or a Lavelle). If so, he has the right. But Congress must not shirk its assigned power to grant amnesty.

Nor should Congress allow itself to be tricked by the argument of opponents of amnesty that all crimes are alike and no "special treatment" should be afforded war resisters. President Nixon seems to be of this mind in saying that these men have broken the law and must pay a criminal penalty. Amnesty was devised to distinguish and wipe out political crimes. A political crime is one which protests against governmental policy or is committed by a group that seeks to change government policy, e.g., protest marches (held by the Court in 1971 in *Holden v. Finch* to be political within the Hatch Act and civil service regulations). Thus amnesty has been used to

erase treason, insurrection, attempted political overthrow, tax refusal, civil and racial strife, draft avoidance, army desertion, disloyalty and espionage, even bigamy and polygamy when accompanied by a political-racial-religious claim of necessity. The basic theory of amnesty is the need, particularly in a democracy, for all leaders of political thought to be retained in the body politic, to encourage the opposition to keep its voice strident. Particularly is this true on issues that narrowly divide the citizenry into majority and minority—as with the Vietnamese War.

There is a further factor here that did not obtain in earlier wars. Amnesties and general pardons were issued at the conclusion of those wars by governments which had a good conscience about what they had done and wished to extend the atmosphere of relief and optimism to those whom the country generally agreed had behaved less than well during the hostilities. Here, however, the situation is quite different: a large part of the country thinks the war should not have been waged; another part, perhaps not as large but still significant, thinks those who refused to fight were right and the various administrations were wrong. It is not, therefore, a matter of forgiving but of the moral stature of the governing powers. It is understandable why Mr. Nixon, though he had said earlier (January 2, 1972) that he would be “very liberal with regard to amnesty,” has now assumed a nonforgiving stance and is trying to bar Congress from amnesty. He apparently fears that any benevolence, any forgetting of these offenses, may imply that he was mistaken in his war and settlement policy. Congress must not be thus turned aside. The more general amnesty of Senator Hart, rather than the conditional amnesty of Taft, Javits and others, should be enacted.

Who are these persons who should be amnestied? What are their numbers? The Pentagon, desiring to minimize the extent of opposition to the war, refers to 2,533 “deserters at large”; Selective Service states that there are 2,400 “fugitives” from the draft law; at the end of 1972 the Justice Department listed 5,400 indictments outstanding for draft violation; and Patrick Buchanan, consultant to the President, accepts these figures and estimates that not more than 7,000 to 10,000 men live in exile. On the other hand, the exile figure used by *The New York Times*, Senator Taft and others who have investigated this matter is 70,000 to 100,000. Further, we can demonstrate the inaccuracy of some of the Pentagon figures. In yearly statistics it showed that the rate of desertion for the Army and Marines increased from 1.6 per cent in 1965 to 5.5 per cent in 1970 and that in 1972 it carried 32,557 deserters “at large.” Robert Musil, former army captain and now associate secretary of the Central Committee for Conscientious Objectors, which has had more contact with anti-Vietnam protesters than any other organization, in February reinterpreted Pentagon figures. Based on 880 questionnaires answered by persons awaiting military trial, the Pentagon claimed that only 5 per cent of desertions were anti-war motivated. Yet Musil finds that while these 880 were “under military control and awaiting punishment, more than two-thirds of the desertions refused to give reasons or offered a clearly anti-military one.” Musil quotes Pentagon surveys which show about half a million

desertions in the decade of Vietnam and AWOL rates more than double those of the Korean War.

The best estimates I can make, after reviewing the data, are: (a) deserters and AWOL—500,000 to 600,000; (b) in-service resisters, mostly receiving less than honorable discharges—200,000; (c) convicted or subject to prosecution for Selective Service violations—100,000 to 150,000; (d) exiles abroad because of the war—60,000 to 100,000; (e) civilians convicted of or charged with illegal anti-war activity—100,000 to 200,000 (mostly minor offenses in demonstrations). It is clear that these totals represent a very substantial leadership potential in our democracy.

Who are the people who would be amnestied? They are not the ordinary criminals who refuse the duties of society, seek to save their own skins, or engage in a life of crime. We are talking about priests like Berrigan and Groppi, academics like Lynd and Ellsworth, medics like Spock, and the sons and daughters of Cabinet members and middle-class America. Mrs. Louise Ransom, a Gold Star mother, pleads for amnesty for these “victims of Vietnam” who are as much to be honored as her dead son. They are not cowards and shirkers. Terry Whitmore, one of the exiles in Sweden, was awarded the Purple Heart and Bronze Star in Vietnam and personally decorated by President Johnson. George Meals, also in Sweden, is a recording engineer who left the army in revulsion against My Lai. Both “don’t think we committed any crimes and are not going to crawl and beg.” Doug Griffin, age 24 and living in Vancouver, believes most “were obeying a higher law.” A survey of exiles in Canada finds a heavy proportion of college graduates, Ph.D.s. and social service workers. It is not merely quantity which we were excluding from national citizenship service, it is also quality.

No one should underestimate the problems that proponents of amnesty will face. Although the fate of political prisoners in Vietnam was a central concern of the peace negotiations, a sampling of Congressional sentiments would show less willingness to give speedy amnesty to our own political offenders. Much of this reticence is inspired by the President and party loyalty. Senator Kennedy’s subcommittee in early 1972 held three days of hearings and found weak support. Senators Taft, Kennedy and Hart have offered bills that range from conditional to complete amnesty. But Senator Eastland was recently quoted as saying that he agreed with the President and that hearings in his Judiciary Committee “aren’t even on the horizon.” Eastland’s counterpart in the House, Rep. Peter Rodino, had a more open mind on amnesty but stated that no House consideration would be possible until all troops and prisoners of war were home. Even as staunch an advocate as Henry Schwarzschild, director of ACLU’s amnesty project, concedes, “If we force a confrontation . . . the result is likely to be narrow, vindictive and useless.”

Every previous significant amnesty has been preceded by a period of public education and advocacy by community leaders. Efforts at public education are now well under way. Two factors are most favorable: the public has been more disillusioned by this war than by any other in our history, and the education this time centers on the

true nature of amnesty as discussed above rather than on supplication for "forgiveness." A coalition of some very powerful leaders of America's conscience is shaping up and has scheduled a conference for this spring—Clergy and Laymen Concerned, National Student Association, American Civil Liberties Union and the leading peace organizations.

Never in United States history has the problem been so large or important. Unamnestied offenses are backed up in the courts for a half century. Many involve our finest young people and potential leaders. We need to erase this blot on American democracy. Even more, we need to recruit these critics into the political process of changing society. □

Monopoly Steak: The Big Beef Merger

JAMES ROWEN

Mr. Rowen is a free-lance investigative reporter in Washington, D.C. He has written for The Nation and other publications about the changing American beef cattle industry.

The current economic fact of life most widely known to the American consumer is the high and rising cost of beef. Now two of the nation's five largest beef-packing and processing companies, and John Connally's Houston law firm, are working out the details for a merger that could easily rocket beef prices entirely beyond the means of the general public. The companies talking merger are Iowa Beef Processors (IBP) of Dakota City, Neb., and Missouri Beef Packers (MBP) of Amarillo, Tex., and rumors of their plan have produced an unusual coalition in opposition, as labor, management and consumer groups all perceive the merger as a threat.

Early last December, the two corporations announced that they were discussing the possibility, with Iowa Beef absorbing Missouri for \$27 million of IBP stock. IBP is the nation's largest cattle slaughterer and beef processor; Missouri is number five. Both companies persist in saying that the merger is still in the "talking stage," but

several published reports indicate that a formal announcement is imminent. Currier J. Holman, IBP's co-chairman, told the annual meeting of the American National Cattleman's Association on January 26, that the "proposed merger" would be "in the national interest," adding that, since the current antitrust strictures are "anachronistic," they'll just have to give way.

The creation of a new company having the combined resources of IBP and MBP would be the most dramatic example yet of the rapid concentration of control in the American beef industry, which I discussed in *The Nation* of June 5, 1972. IBP, only twelve years old, has expanded so quickly that it now produces fully 12.5 per cent of the federally inspected cattle slaughter, in an industry comprised of thousands of corporate units. IBP slaughters 50 per cent more beef than does Swift and nearly twice as much as the other old giant, Armour. Missouri Beef handles more than 6 per cent of the national slaughter, so the new company would control nearly 20 per cent of the national market, and up to 32 per cent of the market in a seven-state territory (Nebraska, Iowa, Minnesota, Kansas, Missouri, Texas and Idaho).

In the packing business, thin profit margins, often 1



"We Were Thinking, Perhaps One Meatless Day per Week?"

Oliphant, The Denver Post

per cent or less, are common. A fluctuation of only 1¢ a pound on a day's slaughter of several hundred 1,100-pound steers can mean profit or ruinous loss for a packer. The projected company could easily win a reverse price war, driving smaller packers out of business by offering ranchers and cattle feeders a slightly higher price for their animals. The new giant could then pass the higher-priced beef on to the retailer, and ultimately to the already squeezed consumer.

In addition, the merger would make the new company a dominant factor in the fast growing Texas panhandle cattle market. IBP owns a 13 per cent interest in Prochemco, Inc. of Amarillo, one of the nation's five largest cattle feeding businesses, and Missouri Beef owns two packing plants in the panhandle area. The new company would have first call on Prochemco's cattle and two slaughterhouses to process them. If cattle prices in the open markets were high, IBP-MBP could buy from Prochemco, thus exerting a lever on the price of beef on the hoof that no other company could manipulate.

The merged company would be especially powerful in a relatively new phase of meat production—"boxed beef." More and more beef is being shipped to retailers from the packing plant already cut into "sub-primal" sections—loin, brisket, rib, etc. Boxed beef is rapidly supplanting the one-piece carcass and Iowa now holds 40 per cent of that trade, boxing more than three and a half times as much as Armour, the nearest competitor. The merger would push Iowa's share to 50 per cent, giving the new company almost dictatorial control.

The first formally to oppose the merger was American Beef Packers, Inc. of Omaha. Smaller than either IBP or MBP, American sees its own entrance into the boxed-beef market, and planned expansion into the Texas panhandle area, threatened by the merger. On January 23, it filed suit in Federal District Court in Lincoln, Neb., seeking an injunction to prevent the merger, citing alleged anti-competitive effects and the threat of "monopoly" in certain areas of the country. At least four other meat packers have notified the antitrust division of the Justice Department that they oppose the merger.

And the Amalgamated Meat Cutters and Butcher Workmen, AFL-CIO, which seldom sees a reason to join with management in a legal action, joined the smaller packers in notifying the Justice Department of its strong opposition to the merger. The Meat Cutters union, which has struck both Iowa and Missouri in recent years over boxed beef (if carried to the point of consumer cuts, it could eliminate meat cutting at supermarkets), protested to the government that the merger would be "merely a concentration of naked power for private profit and aggrandizement affect[ing] the worker, the consumer and the farmer alike." Consumers Union has also made its opposition known to the Justice Department.

The Department of Justice has admitted that it is in touch with the two companies, but has denied published stories that it has actually met with the companies' representatives, who reportedly sought an unofficial government opinion as to whether the merger would be permitted. IBP's relations with the Justice Department are less than harmonious. In 1969, the department successfully sued

the firm, forcing it to sell off two beef-packing plants in Mason City and LeMars, Iowa, which it had acquired in a merger with the Blue Ribbon Packing Co. IBP was given until March 1972 to sell the plants, but failed to do so. The Justice Department then charged that the company was stalling by asking an excessive price for the plants; the federal court granted Iowa two extensions totaling one year. The new deadline is March 20, 1973; if by then the company hasn't sold the Blue Ribbon plants, the Justice Department will attempt to appoint a trustee at IBP's expense to sell off the two plants. Meanwhile, the Meat Cutters union, Consumers Union and attorneys for American Beef have all made the point that it would be utterly illogical for the Justice Department to oppose the 1969 Blue Ribbon merger and yet permit the much more serious merger with Missouri Beef. How the government handles the IBP-MBP proposal will be the best possible indication of what attention the second Nixon Administration will be giving to antitrust matters, and will be a further test of recent Administration rhetoric about consumer problems, especially rising food prices.

If it is allowed, the merger would be a quantum jump in the shift toward one-company control of the beef industry—a control that only a decade ago the experts said was impossible, given the great number of independent feeders, packers and retailers. But Iowa Beef, which has hired ex-Treasury Secretary Connally's law firm of Vinson, Elkins, Searles, Connally & Smith to speed the merger, approaches that kind of dominance. Its unrelenting expansionist appetite is openly admitted by Currier Holman, Iowa's board co-chairman. His corporate policy spells trouble for farmers and consumers alike. In his January 26th address to the cattleman's convention, Holman attacked the concept of small farming and independent packing, saying there was no room for the beef operator who resisted consolidation: "There are too many people doing too many things, and in ways that cost too much." Holman claims that concentrating ownership in the industry would bring savings to consumers, but a high degree of concentration in the 1960s did not lower beef prices; instead it effectively increased the market share of big producers. IBP's sales in 1970 were \$716 million; in 1971 they rose 50 per cent to more than \$1 billion. Similarly, Missouri's 1970 sales were \$219 million; in 1971, up 40 per cent, they were \$304 million.

Holman's corporate ambitions, and the ramrodding idea behind the IBP-MBP merger, are clearly anti-competitive. "A viable beef industry," the IBP co-chairman told the cattlemen, "cannot tolerate the type of cutthroat competition and mistrust common among industry segments of the past—and yet today." The free market, competition, free enterprise—these get in the way of outfits like IBP. In a folksy closing, Holman summed up the IBP approach to the beef industry:

It has been said that between the gleam in a bull's eye as he chases a heifer across the meadow, and the steak at the Waldorf Astoria, there is a vast and complicated business. It's these complications that will kill us. Let's organize and simplify them because the futures that are at stake are certainly our own.

At stake, too, are the budgets of the beef-eating consumers. □

BOOKS & THE ARTS

Gradualism—Common Sense or Positive Thinking?

SOCIALISM. By Michael Harrington. *Saturday Review Press.* 436 pp. \$12.50.

BERT COCHRAN

Mr. Cochran teaches at the New School for Social Research. He is the author of the recently published Harry Truman and the Crisis Presidency (Funk & Wagnalls).

Michael Harrington's book is in keeping with the Marxian tradition of concern with the big questions of our epoch and in transcending the academic dividing lines of the social sciences. It was clear in a number of the reviews I read when the book first appeared that the writers were bewildered by this crisscrossing of specialties and display of erudition in assorted disciplines. For me there is no problem in following Harrington into the ideological thicket since I know the hidden trails and markers from a previous incarnation. All the same, he is not an easy writer to come to grips with because he has not fully integrated the disparate components of his thought—classical Marxism, anti-Stalinism turned into anti-Leninism, and latter-day Social Democratic perspectives. Sometimes, in passing from one section of the book to another, one wonders whether the writer is a split personality.

For several chapters Harrington labors mightily to demonstrate that Marx, after 1850, once he overcame his youthful ultra-leftist romanticism, was a no-nonsense, nonviolent gradualist reformer. This is not a reading that now has wide acceptance among reputable Marxian scholars. At any rate, the thesis was exhaustively argued in the years after the 1917 Revolution by Kautsky, Austro-Marxists, Mensheviks and the Rand School theoreticians. Why rehash it now? It is not something that is being hotly debated either in this country or abroad. If the purpose is to educate along Social Democratic lines a new generation of young radicals, it is not the right pedagogical approach. In past years when Marx enjoyed great authority in European labor and Socialist circles, it was important for Social Democrats to stake out a claim as interpreters of the true Marx and representatives of the authentic tradition. In the America of today, when young people defy the political conventions to turn to political radicalism, the Marx they are necessarily drawn to, if they become interested in Marx

at all, is the uncompromising, irreconcilable revolutionary. Marx is not the best mentor to convince young people of the inevitable triumph of gradualism. Harrington says in an aside, "It could be plausibly argued that the Karl Marx who is described in these pages is a backward, and wishful, projection of [my] present politics." That is what I think it is. And accordingly this section of the book, for all its erudition, struck me as a curiosity.

Harrington has many important and knowledgeable things to say about the struggles of Third World countries to modernize themselves, and on the Russian and Chinese experiences. His discussion is on a far more sophisticated plane than is usually found in popular literature. It is worth reading as a corrective to simplistic appraisals or Communist press agency. But ultimately, it seems to me, his thesis is sterile. It is so unrelievedly negative and formalist as to preclude dispassionate analyses of trends in the Communist countries, or the elaboration of a workable sociology of industrialization. He is indignant about the lack of democracy in the Communist world. That does him credit. Still, the absence of multi-party politics, free press, or free assembly does not exhaust the Russian or Chinese reality. There are other things happening in those societies, and of a world-shaking nature. Is it sufficient to say that the Russian and Chinese regimes do not measure up to Marx's and Harrington's definition of socialism, that their claims are therefore spurious and mendacious, and that consequently Harrington will have nothing to do with them?

It would be one thing if Harrington said he was strictly a moralist, that he is not concerned with history or with practical possibilities; he is concerned solely with what ought to be. But he writes as a combination of political theorist, sociologist and economist, and therefore has an obligation to view the social scene whole. There are also lacunae in his presentation of which he is either unaware or which he has simply not chosen to fill in. On page after page he drives home the proposition that the peasantry and the urban poor are not a substitute for the proletariat in the building of a Socialist society. If the proletariat, however, is the vanguard

that Marx said it was, why has it permitted a stratum of administrators, bureaucrats and commissars to displace it as the ruling authority in Russia? And if Harrington answers that Marx was talking about the proletariat of advanced capitalist countries, not of Russia, then why has the proletariat of Western Europe not performed according to the Marxian script? Harrington assumes what he is called upon to prove.

He writes that the emergence of a privileged bureaucracy is inevitable, given a policy of extracting a surplus from workers and peasants for industrialization. How else, then, are underdeveloped countries to modernize? Well, he has a number of excellent proposals that advanced capitalist powers should adopt to ease the plight of the ex-colonial world, and he says, in another connection, that if the Third World peoples wait until there is a revolution in the West, they may wait forever. That is so. But can Harrington give those peoples any reasonable assurance that they will have to wait less long for his proposals to be taken up? If the history of the past fifty years has demonstrated anything, it has demonstrated that backward countries can modernize only through their own efforts and with their own resources. One can cry out against injustices and call for democratic rights in the Communist world, or elsewhere, without blinding oneself to the imperatives of history. The two are not mutually exclusive.

The most rewarding sections of the book deal with the United States. Harrington believes that at the time of the New Deal a social democratic movement came into being which has had an impact analogous to that of the European Social Democratic parties. I think that is true. The difference between the American and European movements in their organizational make-up is less important than the similarity of the two in their political outlook and political role. But the consequences of this development are not as favorable for Harrington's Socialist perspective, or ideal, as he would like to believe, for the confluence of the European and American movements occurred because the Europeans passed from socialism to liberalism. Harrington thinks that the AFL-CIO has made economic planning

"central to its concerns" since the 1963 convention passed a resolution calling for a national planning agency. He looks for "a basic new evolution in labor politics" because the AFL-CIO criticized in 1971 President Nixon's wage-price controls. These and other attempts to discern socialistic tendencies are unconvincing. In general, it is a mistake to read too much into most trade union resolutions and sonorous declarations, which usually are meant to serve public relations and not to define policy. Actually, the labor officialdom was more forceful in combating inflation and wage freezes twenty years ago during the Korean War than Meany and his associates are today. Harrington ideal-

izes the labor movement not because he is naive but because he is (or until recently, was) under a compulsion to see progress.

Though it may not be living up to Marx's expectations, organized labor is, as Harrington says, a decisive element for any future Socialist coalition. That cannot be translated, however, into a tactic for the present or the discernible future. The Left can make a coalition with labor, or even influence labor, only if and when it becomes some sort of force in its own right. And that will have to come—if it does come—through the power of its own message and appeal. □

Hoedown at Hollins

THE WRITER'S VOICE: Conversations with Contemporary Writers. Conducted by John Graham. Edited by George Garrett. William Morrow & Co. 294 pp. \$8.95. Paper \$3.50.

PETER DREYER

Mr. Dreyer is a South African writer, the author of a novel, *A Beast in View*, and an editor of *Omphalos*, a quarterly review published in Athens and devoted to Mediterranean writings and ideas.

In the summer of 1970 a group of "poets, novelists, critics and editors" came together at Hollins College for the Hollins Conference in Creative Writing and Cinema. While there, a number of them taped interviews with John Graham of the University of Virginia for his radio program, *The Scholar's Bookshelf*. Hollins, situated in Virginia, was founded in 1842. According to the World Almanac it housed 1,084 students and ninety-three teachers in 1972: a private school with 130 years of history behind it.

Almost three-quarters of the writers interviewed in this collection were professors of English, or working in writing programs at one or other college. Those who can be described as professional writers, less involved in teaching than in writing, also include most of the better-known present: Brian Moore, Shelby Foote, William Manchester, Ralph Ellison, David Slavitt (alias Henry Sutton). The eldest of the writers was William Peden (born 1913) and the youngest Michael Mewshaw (born 1943). They are all—except Brian Moore, who was born in Belfast, Ireland—native Americans, and most of them are from the South, or the Midwest. Three are from New York. None are from the West Coast.

Reading the interviews one is at no loss for common denominators. Eighteen of the nineteen are men. Eighteen of the nineteen are white. They are, by and large, highly educated. Only two do not list either a Ph.D. or an M.A. Other outstanding factors seem to be: academic profession, Southern birth.

As a group their work has been predominantly in fiction—more of them have written novels than anything else. But poetry also receives prominent attention, and perhaps engages the interviewer, John Graham, more personally. They include some quite well-known poets: Richard Wilbur and James Dickey were there.

Some have cultivated both forms. David Slavitt (the novels of whose alter ego have been such a success on the mass market) felt, however, that "most poets are incompetent as novelists" and vice versa. He excepted himself, and a few others—none of them at the conference. If the assembled writers had a contemporary hero, it seems to have been Borges; among the mighty dead, a number single out Robert Browning.

All in all an attractive, literate and sophisticated company. Hollins must have been fun to be at that June. The atmosphere of the past, of tradition, would seem to have hung heavy. All those genteel Southerners. Their politeness is at times almost excessive. Says editor George Garrett, confronted with a friendly Yankee: "When I look at Bill Manchester I know why we lost the Civil War. And I can't fault the justice of it."

Mr. Garrett is a poet who seems to see much of life in terms of sports. "Jim Whitehead is big enough, strong enough, and quick enough to play professional football." Michael Mewshaw has "the

build and physical style of a certain kind of athlete, a good quarterback, say, or maybe a pitcher, or a good-dribbling guard with a hot hand for outside shooting. Something of the swagger (and loneliness) of any of these." He remarks that he has seen Jonathan Baumbach "play, smooth, even, steady (and sweatless it seemed) against good (literary) competition on the tennis court." Shelby Foote is reported to be "a marvelous shot with a target pistol." Fred Chappell has "a slight sure-footed crouch like a good welterweight fighter." R. V. Cassill* (*apropos* of writing and teaching writing) is "a playing coach and a top performer."

There is in all the collection no comprehending reference to the war in Vietnam, little to any major social problem, to the world outside, to politics, to race (save for a few perfunctory allusions in the brief interview with Ralph Ellison, where Graham takes the opportunity of complaining that "there is such a tendency towards shrillness, towards polemic. It would be difficult, especially, I think for the black novelist, to write an honest novel and at the same time avoid trying to change all of the world. I mean, the tone of the time is a tone of manifesto, of organizations and activists") or civil rights—though Fred Chappell does say that after the assassination of Martin Luther King, "you couldn't write satire on civil rights anymore." This is being unfair, and quoting out of context. But there's something wrong with this book, with these interviews. Are they, despite the hunting, shooting, football-playing props, reached down out of Hemingway's smelly tote bag, despite so much literacy and good-heartedness, so much right-think and right-speak on the subject of writing, simply precious?

We are, of course, head-on for collision on the stickiest of points. I can almost hear the sighs and summon up George Garrett's massively italicized protests (for like Ronald Firbank he obviously adores italics: R. H. W. Dillard, for example, "looks *just* like Edgar Allan Poe . . . is a *great* teacher . . . outwardly the most *original* of the writers . . . his poem "*Meditation for a Pickle Suite*" *really* was set to music and performed by the Pittsburgh symphony"). And truly, I don't rightly know the answer either. Is it "relevance" one is after, or ought one to respect and be glad of the degree of scholarship and craftsmanship rejoiced in by Mr. Garrett's team? Why is it that they somehow seem less im-

*Since Cassill had finished his abominable novel *Dr. Cobb's Game* the previous year, one must give up the intriguing notion that "Henry Sutton" performed some sort of diabolical laying on of hands at Hollins.

portant, in every way, than people whose names are missing here—because they weren't invited? because they were too proud? by chance?—less important certainly than Bellow, Mailer, Malamud, Roth; less important than Berger, Heller, Burroughs, Oates, Baldwin, Gold; less important than Ishmael Reed; less important—God help us, can this be true?—than Kurt Vonnegut and Richard Brautigan?

Let's assume that in American writing there are two great schools. The first, and older, descended (via Hawthorne, Melville, Emerson, et al.) from an English humanist tradition that was obsolete in England with Bloomsbury, obsolete in America with Fitzgerald, but still for all that capable of producing—say in James Dickey's *Deliverance*—a readable, workmanlike novel: a school resting on the firm, decent, sensible timbers of Anglo-Saxon empiricism; a substructure as inadequate as the archaizing of Gemistos Pletho when it was a matter of coping with the incursions of the barbarians who came out of the adjoining woodwork. In the face of the moral nihilism of Nazism and Stalinism, even the sanity of such stalwarts of British rationality as GBS and H. G. Wells collapsed, Shaw contriving to worship both Hitler and Stalin in a singularly mindless, groveling fashion; Wells simply aghast, his amiable mind "at the end of its tether." It was on the metaphysical resources of European suffering that the human intellect fell back, on the stoical existentialism (yes, for want of an apter word)

of Kafka, Camus, Solzhenitsyn, I. B. Singer. It is essentially in this different tradition, too, that the first rank of contemporary American novelists work.

Let's agree that it's not necessary to write about Indochina in order to be relevant. It is necessary, however, to grasp a reality that encompasses Indochina, Dachau, Katyn. And that is what one feels is lacking in the writers at Hollins, granted the likely exceptions. Good men and true though they be, their notion of reality doesn't hold, cannot contain the murderous contradictions of this age. So they retreat to a simpler set of verities. (James Dickey significantly says, "the best novel I ever read about World War II is James Gould Cozzens' *Guard of Honor*, which is not about combat at all, it's about a training base.") These are not necessarily pacific—you may after all be pierced with arrows and forcibly sodomized—but are, when all is said and done, easier to understand. It is even possible for writers to get together at a conference and affably chat about them. Goddamn, they are more attractive!

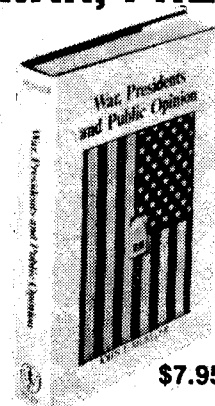
We must cultivate our gardens, and we all do—hoe our little rows, explore our "potential," work at our craft. But in a society that is in as much trouble as this one, isn't there something a bit self-indulgent about getting together in a hothouse to congratulate ourselves on the quality of our posies? Can the American mind afford the *hubris* implicit in the "creative writing" hokum and its attendant fiestas? □

PROPOSITION:

- ☐ Although the Vietnam War inspired far more vocal opposition than the Korean War, both were about equally popular among the general public.
- ☐ The wars in Korea and Vietnam, contrary to many opinions, were disproportionately supported by the college-educated and by the young.
- ☐ It is possible that the anti-war protest during Vietnam increased the popularity of the war.
- ☐ "Liberated" women are likely to be more "hawkish" on war policy than their unliberated peers.

These are just a few of the propositions developed in

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Culture of a Black Cosmos

BATOUALA: A True Black Novel. By René Maran. Translated from the French by Barbara Beck and Alexandre Mboukou. Introduction by Donald Herdeck. Black Orpheus Press. 149 pp. \$9.50.

CHARLES R. LARSON

Mr. Larson is associate professor of literature at American University. He is the author of *The Emergence of African Fiction* (Indiana University Press).

In 1922, by a narrow vote, René Maran won the Prix Goncourt for his novel *Batouala*. The year before, the award had gone to Marcel Proust for *Remembrance of Things Past*, and this no doubt had something to do with the protest that broke out when Maran won the award. Many thought that Maran's work was not worthy of the prize. There was additional irritation caused by the fact that Maran was black and that he had prefaced *Batouala* with a scathing at-

tack on the French colonial service. (The preface bothered the French literary establishment more than the novel that followed it; the novel itself helped to reinforce some readers' beliefs about the inferiority of Africans.)

Maran's preface explained what he meant by his subtitle, *A True Black Novel*. He wanted to be objective in his recording of African life as it was, as he knew it. "It doesn't show indignation: it records," he said of his novel. "It couldn't be otherwise. On moonlit evenings on my porch . . . I listened to the conversations of those poor people. Their jokes proved their resignation. They suffered and laughed at their suffering." Mostly, however, they suffered, for *Batouala* is a painful novel—every bit as disturbing today as it was fifty-two years ago when it was first published. That fact alone gives it a certain kind of distinction, authenticity, whatever you

want to call it, for *Batouala* is all its subtitle proclaims it to be, and a seminal piece of African literature—one of the most overlooked pieces of black writing, ignored by black and white literary critics.

There are reasons for the neglect accorded Maran. It is almost impossible to learn anything about him beyond the most elementary facts. And the critics have rarely known what to do with his work. Should Maran be classified as a French novelist? As an African writer? As a Caribbean writer? One would expect black American critics to claim him as a kindred soul, but they, too, have been almost unanimous in failing to recognize him. Given the recent interest in black studies, that attitude is all the more surprising.

Maran was born in Martinique in 1887 and spent several years of his childhood with his parents in French Equatorial Africa, where his father held a minor governmental post. Because of his health, Maran was packed off to schools in France. When he completed his studies there, he joined the French colonial service in Africa, spending six years in the Congo, where he gathered materials for most of his later writing. After the publication of *Batouala* in 1921, much of his life was spent in Paris where he wrote other novels—better novels, according to Mercer Cook—mostly about African life as he had known it. These later books were, on the whole, unsuccessful, and none has been translated into English. He died in relative obscurity in 1960. Afro-Americans have ignored him in large part because his later works have not been available to them. The original English version of *Batouala*—highly bowdlerized—was published in 1922. It was a translation that Maran himself abhorred. All this has now been corrected with a new rendering of the novel by Barbara Beck and Alexandre Mboukou. It is to be hoped that this translation will lead to fresh interest in his later works and that Maran will finally find the American audience he deserves.

The title of the novel refers to the main character, an African chief named Batouala, through whose eyes we see much of the story. It is a tale of traditional African life confronting the shock of exposure to the West. Maran's genius is that he records this life so fully and so objectively. We can be thankful that he had been educated in the West and that he was able to get these customs down on paper, in a tongue accessible to us, before they died out. We see Batouala as if he were standing in front of us: yawning and scratching himself in the morning, making love

THUNDERSTORM

*I fully intended to write
a poem today about a woman
with dark eyes*

*but a bird
suddenly stopped singing
and a distant summer*

*thunderstorm began to walk
heavily across the prairie
with iron boots.*

*The orchard began to speak
in low voices; my long hoe
leaned against the house.*

*I decided to sit
on the dry porch boards to wait
looking westward with love*

at the thickening darkness.

Michael Niflis

with his wives, trying unsuccessfully to put down a young rival; we see Batouala starving in time of famine, gorging himself when food is available, eventually dying alone—rejected by his first wife who is off with her young lover, ignored even by his faithful dog. In short, Maran presents us with the cycle of traditional African life from birth to death, with all the important way stations of Batouala's masculine world; the rites of passage at circumcision; the tests of strength and endurance by hunting; the inner court intrigues involving Batouala's nine wives.

Batouala is alive with the sounds and smells of an African village. Maran relies heavily on African imagery and folklore from the oral tradition, interpolating many folk tales and songs into his narrative. The result of these influences is that, ironically, *Batouala* is in some ways as experimental a work as Proust's *Remembrance of Things Past*, for *Batouala* defies classification according to conventional Western literary terminology. Maran devotes lengthy portions of his book to mythicizing the African environment; in one chapter a tornado is personified and the effect it has on the African characters is presented; another section treats the sun, Lolo, as if it were a character in the story; another remarkable bit of narration is devoted to Batouala's dog, Djouma. Maran has the ability to make us enter the consciousness of this little creature and see the world from his point of view. (Maran wrote a later novel entirely about Batouala's dog: *Djouma, chien de brousse*, 1927.) Rarely have animals had such importance in adult fiction as they have in the works

of René Maran; the field is wide open for folklorists who want to study Maran's animal tales. The novel as a whole is a storehouse of beliefs and customs—of African attitudes toward life and death that have rarely been presented in works by later African novelists.

For the most part, *Batouala* is an unromanticized account of traditional African life, and that alone brought fuel to the fire of those who wanted to advance theories of black inferiority. One example: in the chapter which recounts ritual circumcision practices among males and females, as the drums and dancing reach fever pitch, the characters break into an orgy of drinking and sensuality; Batouala's father dies from exhaustion. The novel is a far cry from what we have come to regard as protest fiction. Only in rare instances does Maran break into a didactic tone. Even in these places, the charm of Maran's writing overcomes his editorializing.

What was René Maran? A Frenchman, an African, an Afro-Caribbean, an Afro-American? All of these. As precursor of several later black literary movements (Afro-Cubanism, the Harlem Renaissance, *négritude*), Maran's novel deserves recognition as one of the most imaginative pieces of black writing of all times. □

MUSIC

DAVID HAMILTON

Claudio Monteverdi's last work, performed in Venice a year before his death in 1643, was *L'Incoronazione di Poppea*, an opera that has frequently and justifiably been compared with the final achievements of Giuseppe Verdi, some 250 years later. It is a vivid theatre piece with a rich variety of moods and characters expressed in a supple, subtle range of vocal writing.

Francesco Busenello's libretto deals with the scandalous love of the Emperor Nero for Poppea, which leads him to order the suicide of his adviser Seneca and to cast into exile the Empress Octavia. A certain perspective on this remarkable triumph of the "bad guys" is provided by an allegorical prologue, wherein Love asserts his primacy over Fortune and Virtue, but the opera itself contains no moral statement (doubtless Monteverdi's audience, well-versed in Roman history, knew that the erotic celebrations of the final duet did not last long: Poppea died when Nero kicked her in the belly during pregnancy,

while Otho, her displaced and exiled lover, returned to replace Nero on the throne). It is an opera about what love can do, and nearly every scene reflects this concern: the frustrations of Octavia and Otho, the maternal tenderness of Poppea's nurse Arnalta, the dalliance of Octavia's valet and maid-in-waiting. Counterpoised is the stoic virtue of Seneca, but all eventually subordinated to Nero's lust and Poppea's ambition.

Soon after *Poppea*, Italian opera settled into the rigidly codified dichotomy of recitative and aria, but Monteverdi moves freely back and forth between a remarkably naturalistic declamation and structured, rhythmically symmetrical episodes. At 75, his command of the musical language that he, more than anyone else, had expounded and enriched in countless short vocal works and a number of operas (most of them, alas, lost to us) is relaxed and secure. Every character, down to the grumbling soldiers who stand guard outside Poppea's house while Nero dallies inside, is firmly etched, and not a minute is wasted on music for its own sake. There is order and logic here, nonetheless; one has only to look at the changes Monteverdi made in the original libretto, repeating and interpolating lines in order to make refrains that would pattern and unify scenes (these are easily visible in the fine libretto included with the recording on Cambridge CRS B-1901, which sets them off in italics). And his favorite device of a ground bass, particularly a descending four-note scale figure, recurs at crucial points from the Prologue to the final duet.

The resources employed, aside from the voices, are minimal—rather less than the rich ensemble that accompanied *L'Orfeo*, Monteverdi's first opera, written for a court festivity in 1607. The public opera houses that sprang up in Venice from 1637 on did not deploy large orchestral forces: primarily a few strings for the instrumental ritornellos and the chord-playing instruments (keyboard or plucked) that accompanied the singers. There is a lot we don't know about how *Poppea* sounded in 1642—the two surviving manuscript sources, both stemming from revivals after Monteverdi's death, are tantalizingly indefinite and variously corrupt—but that effects of rich instrumental textures and gross timbral contrasts played any significant role seems highly unlikely. It was all in the voices.

New York's first professional staging of *Poppea*, by the City Opera, "packages" the original in so many different, generally inappropriate candy-box enticements that one hardly knows where

to begin unraveling the confusion. Some members of the audience seemed to enjoy the confection on display; their audible responses indicated appreciation primarily of details specifically not Monteverdian in origin or style. Others were bored stiff, and I hasten to insist that their boredom had, equally, no basis in the opera itself.

One level of the candy wrapping—and perhaps a good place to start, since the City Opera took it as given—is Raymond Leppard's "realization" of the source material. Leppard is an English musician—harpsichordist, conductor and scholar—of great talent and imagination. He has prepared editions of several Venetian operas of the period, with

the aim of restoring them to the modern repertory. Especially in his own performances, the results are fetching: tonally lustrous, theatrically charming. But those who know the original sources tell us that Leppard's editions of operas by Monteverdi's pupil Francesco Cavalli are very freely adapted—cut, transposed, stuffed with borrowings from other works, and orchestrally enriched. In the case of *Poppea*, we need not rely on secondhand information, for other editions are available, including a published facsimile of the primary source manuscript; we can see that much is omitted, much altered, a certain amount invented. Monteverdi's forms and his timing are drastically foreshortened and sometimes

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completely wrecked by the cuts—though the opera, which runs a bit over three hours in the comprehensive Cambridge recording edited by Alan Curtis, is not longer than many in the current repertory. The composer's key relationships and harmonic progressions are juggled all over the place by Leppard's transpositions, sometimes of little snippets only—yet the problem of the parts of Otho and Nero (written for castratos) can be dealt with by much simpler expedients.

Another problematic component of "Leppardizing" is the provision of string textures for arias that were probably chordally accompanied; this is done with great suavity, but the sweeping lines Leppard has set around the lullaby, *Oblivion soave*, have more to do with Mantovani than Monteverdi. Even the more discreet examples detract from the primacy of the vocal lines (and sometimes from the intelligibility of the text as well). How much more effective is the final duet in the Curtis recording, the voices of Poppea and Nero twining sensuously around each other in self-absorbed isolation over the steady chordal background, than with Leppard's fiddles and fussy rhythmic elaborations asserting a contrary attraction in the same musical space. And the fussiness pervades even the necessary filling out of the chordal accompaniments to recitatives (the "continuo"): two harpsichords, two organs, lute, chitarrone, guitar and harp are switched in and out, extravagantly combined and alternated in an attention-getting way—more "discontinuo" than "continuo." One senses a frustrated composer at work—an instrumental composer, in fact. Albeit with the highest of purposes, he has effectively diminished one of the greatest works of vocal theatre.

A recording based on the Glyndebourne performances of Leppard's *Poppea* a decade ago (Seraphim IB 6073), although still further abridged from the already crippled printed edition, demonstrates that tonal and expressive values can be extracted from this bowdlerized version. It can be made to "work," if often in anachronistic ways. The City Opera failed to achieve even this, however. Their home, the New York State Theatre, is too large, and unkind to voices, especially in the relatively uncushioned ambience of this scoring. The lethargy of John Nelson's baton, which often failed to coordinate stage and pit, denied the liveliness of declamation that should be the animating force in a performance. The chorus of Seneca's friends marred their striking lament with poor ensemble and in-

tonation. Few of the principal singers expressed the true pitches with much regularity, and only Francis Bible (Octavia) and Alan Titus (Nero) "read" their lines with much conviction. Titus and Carol Neblett (Poppea) made a handsome pair, but he is a high baritone, she now more a mezzo than a soprano; the effect was a dark, rather heavy tonal color in their scenes together. Richard T. Gill sang and played Seneca much in the style of Elsie the Cow.

Gerald Freedman's production, anachronistically set by Lloyd Evans (projections of Galli Bibiena designs implied the *opera-seria* age that had not yet arrived in 1642), took as its point of departure Tito Capobianco's choreographed approach to Handel, with those annoying, ceaselessly busy retinues of posing attendants. But since this is an opera about love, there were beds—Poppea and Nero in a red bed sliding in and out at stage right, Octavia all

alone in blue at stage left. Later, a big canopied affair appeared at the rear, occupied by Nero and Lucan for the scene where they celebrate Seneca's death. In recent years, this fetching, madrigalesque episode has been staged as a drunk scene, without any textual justification; since Leppard's edition omits the end of the scene, where Nero makes it clear that Poppea is the object of his ecstatic caroling, his arbitrary editing gave Freedman a chance to vary the appeal of his bed scenes.

But all this teasing sex-show stuff is really very silly; *Poppea* isn't bedroom music—it is implicitly erotic music, but in that it contemplates the pleasures of love, anticipating or reflecting on them but certainly not illustrating them. These bits of soft-core pornography represent the final, most pathetic gimmick employed to make *Poppea* palatable to the State Theatre audience—but this show isn't palatable on any level, and it isn't *Poppea* either. □

THEATRE / Harold Clurman

With *The Changing Room* (Morosco Theatre) David Storey emerges as one of the most interestingly representative of England's newer dramatists. He speaks about his country and its people with a true feeling for their nature and their plight. He did so quasi-symbolically in *Home*, with laconic harshness in *The Contractor*, and with something approximating documentary naturalism in *The Changing Room*.

In all these plays one finds a British toughness, an avoidance of sentimentality, a healthy compassion and "common sense." This differentiates Storey from the increasing, barely veiled hatred in John Osborne, and the nastiness in the comedies of Joe Orton and Simon Gray. Storey is more centrally typical of England today than any of the others.

In writing from London about *The Contractor* some years ago, I found myself demanding of Storey a more subtle sense of character, a deeper humanity, as in Gorky. But the comparison or analogy, I now suspect, was odious. The difference between Storey and Gorky is not only one of individual talent but of national complexion. The contemporary English playwright reacts to the constriction of a shrinking, neglected and isolated society which does not see its way out of the impasse into which it has recently been thrust. The Russia of Gorky's time, for all its backwardness, was moving toward an ex-

pansion of its potential, of which the very presence of Tolstoy, Chekhov and Gorky were the portents.

Much of *The Changing Room* is verbally unintelligible to us, the Yorkshire speech being faithfully reproduced by an entirely American cast. Still, the play comes over perfectly—clear, eloquent, effective.

In many working-class dramas, one hears a good deal about hardships, but rarely sees them at work. In *The Contractor* a group of men construct a wooden framed tent to be used for dancing at a wedding party: it is tedious work to do and to watch. In *The Changing Room*, the work consists of the eye-catching preparations for a rugby match, then its cruel physical consequences, followed by the men's resumption of their "normal" existence.

They are of all kinds, chiefly unified by their mutual involvement in the team work and by their lowly estate. One is a professor of economics, moonlighting as an athlete, another is an addled cuckold who saves his pitiful earnings to buy an electric tool chest for which he has little use, but which he probably believes will endear him to his unfaithful wife. One man, a foppish bloke, is given to betting on the horses; still another is a good-looking self-elected "star," always eager to provide fans with his autograph. One stolid fellow has no apparent ambition or claim to distinction except that he

does his job well and without bluster. The captain of the team enjoys a few privileges not accorded the others. Also slightly elevated in the hierarchy, the trainer, the manager and the patcher of wounds, basically good-humored and kindly, perform their duties with rough efficiency. At the bottom of the heap is the cleaner of the changing—or, as we would say—the dressing room, an old-timer who sees disasters blowing their way through the satanic stratagems of the Russians. He is the butt of constant teasing, which is a sign that the other workers are confident of their island safety.

With all this there exists a casual camaraderie, an unspoken and apolitical class consciousness, among these men which make them a stronger, braver group than one might at first suppose. They are unwitting stoics, marked by gritty patience of the sort that gives the "ordinary" Englishman his dignity and limitation and earns him the admiration and exasperation of the foreign observer.

The knighted club owner and his henchman, the club secretary, are not bad sorts: they always have a good word for their employees (especially when they win), they know little about the actual mechanics of the game, they rarely watch its process. They stand apart, looking on as sympathetically untouchable referees. The savage hurt which the players sustain, the broken fingers and noses, the torn muscles, the scarred skins, the cuts, bruises, the strains and exhaustion of lungs, the mixture of cold and dirt in the dingy, graceless "backstage" which is the changing room—these are not experienced by those on top.

But something else excites the audience. The group picture is replete with the movement, the detail of the work. As staged, and it is very well staged by Michael Rudman, the production is a veritable ballet, showing all the major and minor activities of disrobing, rub-downs, preliminary exercises, medical repair, showers, cleaning up, in constant counterpoint. The stage roars with activity: we comprehend it all, even if many of the words fly past us. So all this shaggy material becomes *theatre*, or, to put it in Cocteau's words "not poetry in the theatre, but poetry of the theatre."

The casting throughout is admirable. To give proper credit I should be obliged to name the entire roster of twenty-two actors. If I single out John Lithgow it is because, as the man betrayed at home, smashed up on the field and desperately clinging to his precious tool chest, his part is the most pathetic,

the nodal point of the play's submerged inner drama.

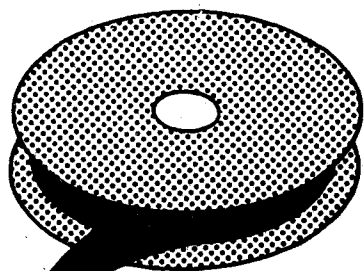
Sam Shepard is a voice from the "underground," a poet's voice. His plays are mythic. They speak of the contemporary world and subliminally convey a social "message." They possess no specific ideology, they proclaim no prophesy except the ultimate doom of the present state of civilization. They express a yearning for restoration through the ancient virtues of kindness and human brotherhood, unity of flesh and spirit. Because he employs no philosophic identification tags, what he tells us must of necessity remain somewhat vague or ambiguous.

The Tooth of Crime (presented week-ends under Richard Schechner's direction by the Performance Group at 33 Wooster Street) is a characteristic Shepard play and possibly his best. Its basic "story line" is a battle to the death between two forces in the persons of Hoss and Crow, depicted as Pop singers,

who may also be viewed as murderous racketeers. They fight it out to the end not with blades or pistols but with verbal assault couched in a language which is an amalgam of rock jargon, race-track slang, foreign sports-car cultism, pugilistic and gang-war vernacular.

The sum is often a sort of surrealist automatic writing, occasionally obscure, packed with low-life neologisms, invented turns of phrase, and sheer sonorous exhilaration. To understand it all prosaically a glossary would have to be supplied. But even as it stands, with much which goes past earshot and quick comprehension, it rings out triumphantly. A good part of the play's merit is in its speech, with its ever changing modalities echoing different jazz or rock styles, crooners and shouters.

The play begins with a song: "It's another illusion to add to your confusion of the way things are. . . . Here's another sleep walkin' dream, A livin' talkin' show of the way things seem. . . .



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But sometimes in the blackest night
I can see a little light."

The "dream" is a mite "mixed up" because, apart from the novel lingo and the explicit story of a rivalry between the two Pop music styles, the funky proletarian and the commercially packaged, other connotations are repeatedly suggested by the text but probably fail to register with the audience as the play is now presented. To put it crudely, the struggle is between a grass-roots democratic "capitalism" and our cold-steel latter day society headed toward something akin to fascism. The representative of the first force, Hoss, is tempted by and being shoved in the direction of the dictatorial "totalitarianism" of the "computerized" Crow.

For though Hoss is a champ, very nearly a solo virtuoso, he still operates within an established code. He treasures memories of the past, of once honored traditions, while Crow is the new man, all action with nothing to mitigate his thrust to power. Because of the remnants of a higher law within him, Hoss suffers a "doubt dose"—doubt both as to whether he had not better move with the tide as well as doubt that he will ever be able to make the "Gypsy" scene of absolutely individual hegemony.

Hoss recognizes that his "whole system is going down the tubes." His girl, Becky Lou, at first fearful of the contest with Crow, later urges him to undertake it because she sees "Power. That's all there is. The power of the machine. The Killer Machine. . . ." Hoss admits he is too old for this. He is only a man; he craves peace. But Crow, once "the Outside and now the Inside," proves invulnerable. Hoss "smokes at the seams" fighting Crow to maintain his rule; Crow is entirely sure of himself, going as far as to try teaching Hoss the technique of devastating indifference to all sentiment. Do what he may, Hoss cannot throw off the softer and freer heritage in which he was reared. He doesn't capitulate, he kills himself.

Some of this argument is conveyed in song. The play, with all its raucous obscenity, is very much a drama in song. I quote part of one to give some idea of Shepard's special vein. It might be called Crow's Credo:

What he don't know—the four winds
blow
Just the same for him as me
We're clutchin' at the straw and no
one knows the law
That keeps us at sea.
But I believe in my mask—the man
I made up is me
And I believe in my dance—and my
destiny. . . .
I coulda gone the route of beggin' for
my life

Crawlin' on my hands and knees
But there ain't no Gods or saviors
who'll give you flesh and blood
It's time to squeeze the trigger.

The music and singing of the production are not what they should be—indeed they barely exist, since Schechner as director seeks something much less regulated. He wants to shatter continuity, break the scenes, by moving the action through shifts in space, up and down, backward, around and sidewise, over an elaborate structure. The audience is forced to move about to follow the action. Something is gained, but much, I believe, is lost. Not that the scheme is wrong, but the particular spatial arrangement employed, while it stresses some of the jaggedness and rock "upset" of the spiritual as well as the physical environment, also impedes a sense of the whole, the play's direct "line," which must be preserved despite the various changes of tone and mood. In Grotowski's productions the use of space always conforms to and adds meaning to the play. The same was true in the case of the Italian Ronconi's *Orlando Furioso*. What is especially worrisome about the Performance Group's setting for this play is that it is an obstruction to its actors: they are obliged to contend with it. Thus the meat of the play is turned into chop suey of less sufficient nourishment than I believe it might contain. We twist and twirl—and there is a certain fun in that—but as for the core of the play we get nowhere.

The audience enjoys the brouhaha and extravagance of it all, but Shepard's original lyricism, the gist of its pulsation, is considerably dissipated. What captivates the young folk who constitute the majority of the Performance Group's interesting audience is the *now* feel of it all, especially as they are far more familiar than I am with the rock heroes named throughout and the mythology which surrounds them.

The Tooth of Crime is a play susceptible to many different treatments. I was glad to see what the Performance Group did with it. The audience was refreshingly enthusiastic in a fashion more simple-minded than the play itself. But the experiment I might most appreciate would be one in which Shepard's written stage directions were scrupulously followed on the highest level of competence.

Spalding Gray as Hoss, Joan MacIntosh as Betty Lou, Hoss's sidekick (especially noticeable in a dream enactment of seduction in the manner of an earlier American era), Timothy Shelton as Crow, all carry out their very difficult tasks valiantly. □

DANCE

NANCY GOLDNER

The Joffrey Ballet's decision to ask Twyla Tharp for a new ballet for its own repertory was daring and sensible. She is a relatively "underground" choreographer who appears infrequently in New York. Unlike the works of many modern dance choreographers who are invited to create something for a ballet company, Tharp's work is intensely individualistic and pointed; hers is not the kind of styleless style that would fit in anywhere. If you want a nonballet, you do not ask Tharp unless you want Tharp. She is a fascinating choreographer, one of the few of whom I can say that it matters less whether you like or dislike her work than that you see it. She makes you watch closely and she makes you think, both while the ballet is going on and after.

On Broadway, on television and in the formal theatre there has been an increasing amount of stylized jazz dancing and social dancing. In her last few pieces Tharp has been exploring social dancing, using old jazz masters such as Jelly Roll Morton and Scott Joplin and, in her new work for the Joffrey, *Deuce Coupe*, a selection of songs by the Beach Boys, a contemporary rock and roll (in contradistinction to rock) group. Her own use of social dancing is just as stylized as the Broadway and young black jazz stuff, but is totally devoid of their tired and false conventions. One reason is that, musically, she has gone to first sources. More crucially, she has dug into social attitudes that inform specific gestures and a generalized style we have come to take for granted. Tharp takes nothing for granted. A Tharp pelvis roll, slump, kick and turn—executed with controlled abandon, self-satiric nonchalance, seeming haphazardness—looks like nothing else you have ever seen; at the same time, it is more true to social manners, the music being danced to, and the fiber of dancing itself than is any other exposition of popular style I have seen. By catching the essence, she makes you understand that there is an essence.

She also makes definitively clear the links between today's rock-and-roll dancing and old-time rag dancing and, by extension, similarities in the music. She likes to note similarities between social and classical dancing. For example, in the *Bix Pieces*, given at Central Park last fall, she repeated her rag steps to Haydn. Her concluding dance of the *Raggedy Dances* (to Joplin) was

set to Mozart. The steps and kinetic personality were the same, but their being danced to the likes of Mozart removed specific context and suggested roots as deep as those of ballet and beyond—to court dancing. The fact that Tharp can get away with such a trick indicates that her choreography has hit the core of something—though at this point I do not fully understand what the core is.

In *Deuce Coupe*, first given by the Joffrey on March 1 during its New York spring season (February 21 to April 1), Tharp's historical sensibilities are again at work. Her own small troupe, combined with dancers from the Joffrey, literally rock and roll to the Beach Boys. Their clothes have both a contemporary and 1940s look. The dresses are a sophisticated version of what a child might wear for her tap dance recital. It is on the button and slightly satirical, as is the dancing. One dancer, in a pale pink dress, stands in the middle of the "free-for-all" dancing and executes ballet steps in what Tharp's program note calls "an alphabetical but not-so-straightforward rendition," starting with *ailles de pigeon* and ending with *voyage arabesque*. (One wonders how many dictionaries she had to dip into to come up with some of her ballet terminology.) In this particular ballet the attempted juxtaposition or fusion of styles is the weakest point, one reason being that it is difficult to understand whether juxtaposition or fusion is intended, or whether ballet is being satirized or admired. At one point a social dancer strikes an adolescently romantic pose while Erika Goodman, the pillar of tradition, strikes an *arabesque à la* Taglioni, the great 19th-century ballet dancer. But most of the time Goodman is just there and I, for one, wished that she and her *déboulés* and *dégagé à la quatrième devant en l'air* would get off the stage.

Tharp's ambiguous attitudes toward rock and roll, the fun-lovin' and affluent America that the Beach Boys represent and to a certain extent extol, and teen-age dancing and attitudes implicit therein are what make *Deuce Coupe* fascinating and thoughtful. The Beach Boy songs used are souped-up and dumb, though one of them, *Mama Says*, is satirically so. The lyrics tell you to "brush 'em like crazy, run around, and never be lazy." The dancers do a prim little exercise to it. Tharp lays the songs to rest, but at the same time manages to convey a sympathy, even a love, for what she is murdering. You sense the love because she treats the music like program music; in other

words, the Beach Boys do offer something real to dance to and do offer something that prods the imagination into finding visual images in parallel with the music. The songs allow Tharp to choreograph musically. Yet this programmatic treatment results in ludicrous or silly movement. To *Don't Go Near the Water* (because of pollution), the dancers "dance out" choking, strangulation, and other physical disasters. To *Alley Oop* the dancers swing their arms like apes. Other dances capture in more abstract form the hairbrained exuberance and dizzying energy of modern social dancing and the music's sentimentality. The dancing, of course, is a million times more imaginative than the music. When Tharp is dancing, it is much more beautiful too, but then Tharp is a great dancer. Yet the choreography always treats the music on its own terms and proceeds from the music. Tharp's victory is not loaded; besides, competition is not the central point. Lively and complex dancing is.

Scenery is provided by local talent—those driven graffiti artists who have seen fit to interior decorate our subways. While the dancing is going on several of them are stationed at the back of the stage, where they spray, spray, spray on a white backdrop. This reference borders on the cute and provides an unnecessary and perhaps unwanted topicality to the ballet, but graffiti looks better at a distance than on the subway. If *Deuce Coupe* keeps a few artists out of the subway, it has performed a useful social function and one should not complain. □

FILMS

ROBERT HATCH

The whole of Howard Zieff's *Slither* is really one slow take, which makes it perhaps the most prolonged dropped jaw in show business. I found it funny—not productive of a great many laughs, but internally warming by its appreciation of the zaniness in our modern life.

Dick Kanipsia, Barry and Mary Fenaka, Kitty Kopetzky and other American birds of passage are transformed by only a slight application of cinematic license into a gaggle of comic-book superkids pounding down the highway in search of "wealth beyond your wildest dreams." If I were to outline the plot of *Slither*, the reader would curl his lip and turn the page. There is nothing to be said for it, except that it is the sort of thing a good many

Americans can imagine themselves getting tied into; and, anyway, the plot is hardly the point. What matters is the style of these argonauts, a chuckle-headed band of amorlists endowed with the native belief that success is a good break around the next corner and protected from an inflated notion of their own cleverness by an ability to roll away from disaster. Or perhaps "slither" is the word.

Dick (James Caan), a college football star turned auto thief, has come out of jail with nothing in his pockets and little on his mind except half a clue to hidden loot. Barry Fenaka (Peter Boyle), self-proclaimed embezzler but recently fronting as a saxophonist/master of ceremonies for fraternal gatherings, knows the other half, and as soon as they manage to trade secrets (after circling each other in the manner of gang bosses they must have admired on some late show), Barry hooks up his paneled and gadgeted mobile home to his big stereo-equipped convertible and they are off for Eldorado. They are followed by a huge, black, impassive land yacht that fills them with dread.

You have to listen to the dialogue. Suddenly in the night, the parked camper begins to careen as though in a hurricane. "There's someone on the roof," Dick hazards. A moment later, Mary Fenaka, who had loved Dick from the sidelines when they were in college together, says: "I want to thank you for all you've done for us," and Dick smiles modestly, aware perhaps that all he has done is try to stay alive in a situation that entirely befuddles him. And Kitty (Sally Kellerman), who pops pills and believes that she is a girl anyone would appreciate having at his side in a tough spot, is always worth attending. She speaks in a rich, husky voice and has

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*Though we share a world with creatures and plants,
We do not live with them there.
We live where we are with the objects we make,
And the objects we make
Are nothing without us:
The sigh in the pipes, the squeak of the wheel,
The unfixable drip of the hot water faucet
Are all parts of us crying
That we may attend to our living.
When the shade flies up in the middle of the night
It is we who are giving us
Our own gift of surprise.
The coat with the muffler plugging its sleeve,
Shirts hanging like torsos from metal hooks,
The trousers returned in plastic bags from the cleaners
Hide in the shadows of closets, ghosts
Estranged from their flesh: we are their flesh,
We lend them our bodies,
And when we hear the wood of our tables and chairs
Sob in the dark like small lost souls
It is we who are remembering to tell ourselves
How seldom we think to keep ourselves well
Or love our only lives enough.*

Jack Anderson

apparently memorized a slightly out-of-date hip glossary. Occasionally, though, she coins a phrase of her own: "I'm in heat," she says, meaning to convey that she is carrying a gun.

Do I convince you? Somehow I doubt it. The quality of *Slither* is in its skewed verisimilitude, and that is hard to convey. American highway democracy, Friday night at the lodge hall, a bingo game under a Chautauqua tent, Fenaka's virtuoso control of his wind-shield wipers, the food and drink of the mobile millions—all these are documented with piercing accuracy. But the people passing through are not quite synchronized to the Pop art super realism. They look all right—indeed they look perfect—but what they say and do is just a degree refracted. In short, they are a little nuts. And that, I think, is what Zieff wants to say about America: not vicious, not cruel, not destructive, not ugly—just a little nuts. To be sure, it is a soft indictment, but harsher judgments abound and this is a view worth considering.

Luchino Visconti, the Italian director who for the past several years has been intoxicating himself with Teutonic decadence (*The Damned; Death in Venice*) now presents *Ludwig*, vignettes from the life of the last, mad king of Bavaria. It is a sorry business.

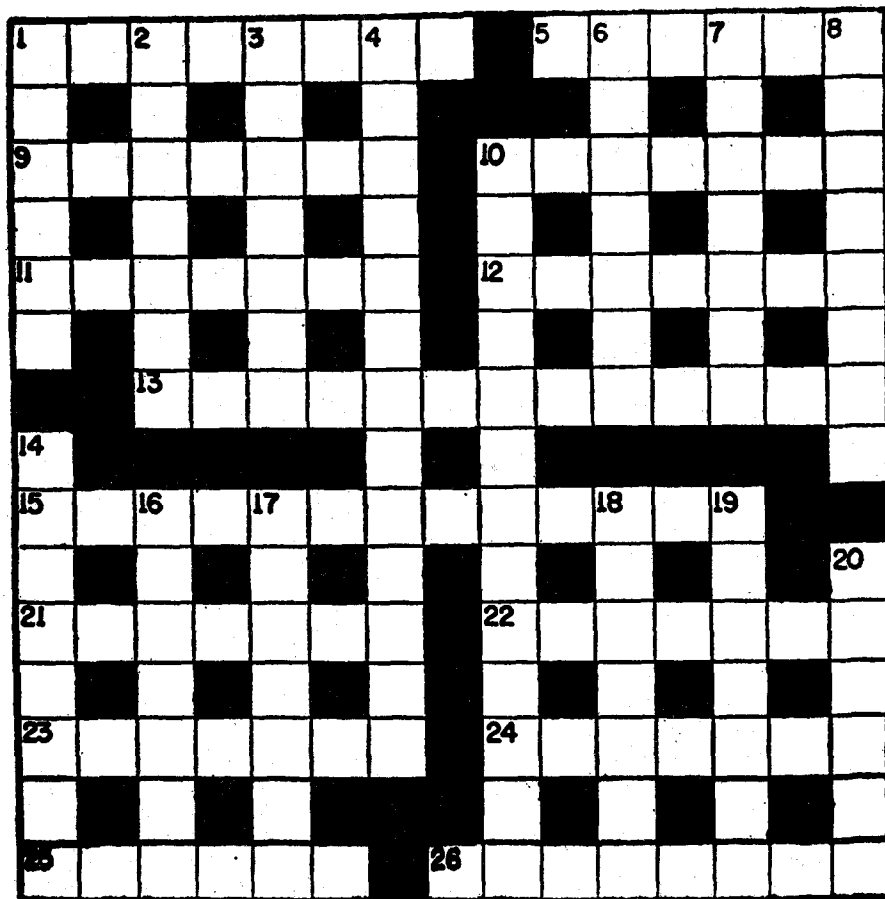
Before our very eyes the ravishingly handsome ruler (Helmut Berger), patron of Wagner, builder of fairy castles,

lover of pages and ploughboys, descends from state occasions and family gatherings into a nightmare of chocolates, swan boats, bad teeth, sweet champagne, evil companions and the madhouse. Bismarck intervenes and history takes its course. We all know that something of the sort took place a hundred years ago in the beauty spots of the Bavarian Alps, and this picture has nothing but morbid sentimentality to contribute to the story. Berger is a singularly unprojective actor; he can stamp his boot and he can giggle, but these are trap-pings, not characterization. In justice, however, that is probably all he was asked to do, since the idea seems to have been to induce the silly-minded to exclaim how "awful" he is. Romy Schneider, as Elizabeth of Austria, is as handsomely impassive as ever. Trevor Howard, a puzzling choice, plays Wagner as though he were a mountebank winning his way by resort to vapors. That, at least, is something to think about. The architecture, the sumptuous interiors, the mountain lakes and ravishing mountain landscape are standard items on the eight-hour bus tour.

Anyone disinterring Ludwig needs a reason for the unappetizing project. The desire to make a gloomy picture about pathetic little princelings is not sufficient, unless by some exercise of compassion you can get past the surface of their lives. Visconti offers a waxworks, repellent but so lifeless as to make no mark. □

Crossword Puzzle No. 1482

FRANK W. LEWIS



ACROSS

- 1 and 5 across Young looking, but with a hold on a once-wanted example. (8,6)
- 9 Washington's current complication is just too camp! (7)
- 10 With which one can't find words to put in a paragraph, as I always say! (7)
- 11 A lot's at issue for Elaine, environmentally speaking. (7)
- 12 Boundery? (7)
- 13 Did seem rather awkward with a flag about, but that's what the doctor wanted! (7,6)
- 15 Emperor, religious leader and poet. (9,4)
- 21 To be indebted to the girl inside is enough to daunt one. (7)
- 22 Unique place to look for a dollar, as you might say. (3,4)
- 23 Cold drop dispensers. (7)
- 24 List of numbers, possibly. (7)
- 25 Effort about to finish a neologism for the modern. (6)
- 26 Quantities of sesame strewn about the old city. (8)

DOWN

- 1 Opportunity might be so given to the budding star in subordinate activity. (2-4)
- 2 Made "gin" once, they say—and probably cleaned up because of it. (7)
- 3 Caused loss of possession, perhaps. (7)
- 4 Not exactly an olive or a pickle—though

some party-goers might consider it a habit. (8,5)

- 6 This sort of monotreme can hide deceptively. (7)
- 7 Seated position. (7)
- 8 One used to watch stock fluctuating there, and make a tidy bunch of it, too! (8)
- 10 What the ultimately victorious French had to go through! (3,2,8)
- 14 A section made of one with a single blade in the water. (8)
- 16 A recluse has to come back in the time remaining. (7)
- 17 Was of some benefit, but a sign of victory had some trouble making it. (7)
- 18 Burdensome when a person has ours, in a way. (7)
- 19 Is the character of children's stories barely made out? (7)
- 20 What a feller leaves makes an answer impossible! (6)

SOLUTION TO PUZZLE NO. 1481

ACROSS: 1 Sapid; 4 Ambergris; 9 Uniformly; 10 Diner; 11 Forbidden; 12 Unite; 13 Test flight; 17 Mosquitoes; 21 Ratio; 22 Arrogance; 23 Syria; 24 Innkeeper; 25 Archetype; 26 Durer. DOWN: 1 Scuffs; 2 Pliers; 3 Drop in; 4 Armed neutrality; 5 Beyond the fringe; 6 Redouble; 7 Rantings; 8 Surfeits; 14 Ambrosia; 15 Esoteric; 16 Automate; 18 Agreed; 19 Sniper; 20 Bear.

Readers are invited to send for a free copy of Mr. Lewis' "ground rules." Address Puzzle Department, *The Nation*, 333 Sixth Avenue, New York, N.Y. 10014.

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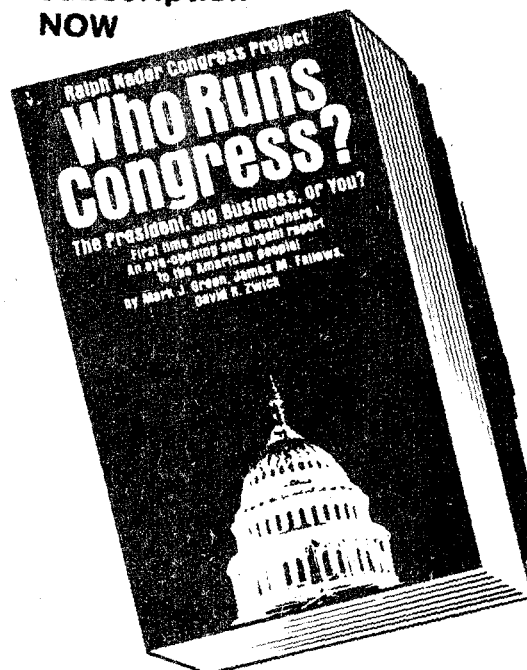
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